



City of Loma Linda Official Report

Floyd Petersen, Mayor
Stan Brauer, Mayor pro tempore
Robert Christman, Councilmember
Robert Ziprick, Councilmember
Charles Umeda, Councilmember

COUNCIL AGENDA: September 13, 2005

TO: City Council

VIA: Dennis R. Halloway, City Manager

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer

SUBJECT: Annexation No. 68 to the Landscape Maintenance District (South side of Mission Road, East of Pepper Way, Tract 16323, American Pacific Homes) Easement Deed, CC & R's and Forbearance Agreement

RECOMMENDATION

It is recommended that the City Council approve the offer of easement, accept the CC & R's and enter into the forbearance agreement in association with Annexation No. 68 to the Landscape Maintenance District.

BACKGROUND

The City Council approved Annexation No. 68 to the Landscape Maintenance District on May 24, 2005. At that time the Developer, American Pacific Homes, requested clarification regarding maintenance costs associated with the jointly maintained SCE Easement Park and the conditions under which the City would activate the LMD and take over lead maintenance responsibilities.

ANALYSIS

The associated documents have been reviewed by the City Attorney and terms have been negotiated by the City Manager. The easement documents clarify the rights and obligations of the Association regarding the park areas to be maintained. The CC & R's reflect the cost sharing for the SCE Easement. The forbearance agreement clarifies the conditions necessary for the City to step in to maintain the LMD areas. The activation of the LMD would require the collection of assessments to cover the cost. This LMD is intended to be in reserve to the Homeowner Association maintenance.

FINANCIAL IMPACT

None.

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WHEN RECORDED MAIL TO:

Signature of Declarant or Agent determining tax - Firm Name

EXHIBIT "A"
Easement Grant Deed

Parcel 1:

That certain real property located in the City of Loma Linda, County of San Bernardino, State of California, and more particularly described as:

Nonexclusive easements for ingress, egress, access, landscaping, irrigation, and maintenance as set forth in the "Declaration" (defined below), in, on, over, across, under and through Lots A through K, inclusive, of Tract No. 16323, as per Map recorded in Book 308, Pages 35 through 41, inclusive, of Maps filed in the Office of the County Recorder of San Bernardino County, State of California as being dedicated to the City (referred to herein as the "Realty"), together with the right to grant and transfer same.

THIS DEED is made and accepted and the Realty is hereby granted subject to the following:

- (a) The covenants, conditions, restrictions, easements, reservations, rights, uses, limitations, liens, charges and all other terms and provisions (hereinafter collectively referred to as the "Covenants") set forth in the "Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Mission Lane" recorded on _____, as Instrument No. _____, in the Official Records of San Bernardino County, California, together with any amendments, modifications and/or re-recordations thereof ("Declaration").
- (b) All reservations, easements, covenants, conditions, reservations, restrictions, rights, rights-of-way, dedications, offers of dedications, equitable servitudes, and other property rights of record, apparent, described and/or depicted on the map, or ascertainable by inspecting the Realty.
- (c) All zoning ordinances and regulations and any other laws, ordinances or governmental regulations restricting or regulating the use, occupancy or enjoyment of the Realty.
- (d) Any other matters created, permitted or approved by Grantee.

Grantee, by acceptance and recordation of this Deed, expressly accepts, covenants, and agrees to be bound by and to assume performance of all of the provisions and requirements as set forth in the Declaration, which provisions and requirements are acknowledged to be reasonable and incorporated herein by this reference thereto. This grant is subject to and expressly conditioned upon the performance of such provisions and requirements to be performed by Grantee thereunder.

Recording requested by:
LandAmerica

When recorded return to:
GALLAGHER & MOORE
Frederick C. Moore, Esq.
2 Park Plaza, Suite 300
Irvine, California 92614

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
MISSION LANE

A Residential Planned Development

NOTE: AS MORE FULLY DESCRIBED IN THIS DECLARATION OR OTHERWISE PROVIDED BY DECLARANT, IN THE EVENT OF ANY DISPUTE(S) ARISING HEREUNDER, OR RELATING TO THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT, SUCH DISPUTE(S) SHALL BE SUBMITTED TO A NONADVERSARIAL PROCEDURE AND IF NOT RESOLVED, SUBMITTED THEREAFTER TO AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE (E.G., BINDING ARBITRATION), AND AS A RESULT THEREOF, SUCH DISPUTE(S) WILL NOT BE LITIGATED IN A COURT OR BEFORE A JURY.

IF THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURE AND WAIVER OF JURY TRIAL IS UNACCEPTABLE, AN INDIVIDUAL OR ENTITY SHOULD NOT PURCHASE IN THIS PROJECT.

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EXHIBITS:

Exhibit A - Depiction of Common Area Easements
Exhibit B - Annexation Property
Exhibit C - Depiction of Association Walls
Exhibit D - No Parking Areas of Public Streets
Exhibit E - Sideyard Easement Areas

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
MISSION LANE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this ____ day of _____, 200__ by APLL70, LLC, a Delaware limited liability company ("Declarant").

W I T N E S S E T H:

A. Declarant is the owner of that certain real property located in the City of Loma Linda, County of San Bernardino, State of California, more particularly described as follows:

Lots 45 through 57, inclusive, of Tract No. 16323, as per Map recorded in Book 308, Pages 35 through 41, inclusive, of Maps filed in the Office of the County Recorder of San Bernardino County, State of California

(hereinafter referred to as the "Lots").

B. Declarant is also the owner of that certain real property located in the City of Loma Linda, County of San Bernardino, State of California, more particularly described as follows:

Nonexclusive easements for ingress, egress, access, landscaping, irrigation, and maintenance in, on, over, across, under and through those portions of the Lots described and/or depicted on Exhibit "A" attached hereto and incorporated herein by reference

Nonexclusive easements for ingress, egress, access, landscaping, irrigation, and maintenance in, on, over, across, under and through the property described and/or depicted on Exhibit "A" attached hereto and incorporated herein by reference

(hereinafter referred to as the "Common Area"). The Lots and the Common Area are hereinafter sometimes collectively referred to as the "Property".

C. Declarant also owns that certain real property located in the City of Loma Linda, County of San Bernardino, State of California, more particularly described in Exhibit "B" attached hereto ("Annexation Property"), which may, from time to time, be annexed to and become part of the Project (as hereinafter defined), in accordance with the Article herein entitled "Annexation of Additional Property."

D. Declarant desires to develop the Property and all portions of the Annexation Property, which are annexed thereto pursuant to this Declaration, as a common interest development, more particularly described in Section 1351(k) of the California Civil Code as a "planned development" (hereinafter referred to as the "Project"), consisting of single-family detached homes, landscaped areas and other improvements, as more fully described below.

E. Declarant deems it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy, and enjoyment of the Project, and to establish, adopt, and impose covenants, conditions, and restrictions upon the Project for the purpose of enforcing, protecting, and preserving the value, desirability, and attractiveness of the Project.

F. Declarant deems it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a corporation which shall be delegated and assigned the powers of administering and enforcing said covenants, conditions and restrictions.

G. Mission Lane Maintenance Corporation, a California nonprofit, mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

H. Declarant intends to convey the Property subject to the covenants, conditions, and restrictions set forth hereinbelow.

NOW, THEREFORE, Declarant agrees and declares that it has established, and does hereby establish, a plan for the development, maintenance, protection, improvement, use, occupancy, and enjoyment of the Project, and has fixed, and does hereby fix, the covenants, conditions, restrictions, easements, reservations, equitable servitudes, liens, and charges (hereinafter collectively referred to as the "Protective Covenants") upon the Project. Each and all of the Protective Covenants shall run with the land, shall be enforceable, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, successors, heirs, executors, administrators, devisees, and assigns, and may be enforced by any Owner or the Association.

ARTICLE I

DEFINITIONS

Section 1. "Annexation Property" shall mean and refer to that certain real property described in Exhibit "B" attached hereto (hereinafter referred to as "Annexation Property"), including all Improvements (as defined below) constructed thereon, all or

any portion of which may be annexed into the Project by Declarant, as set forth in the Article herein entitled "Annexation of Additional Property."

Section 2. "Architectural Review Committee" shall mean and refer to the architectural committee created pursuant to the Article herein entitled "Architectural Review - Approval."

Section 3. "Architectural Guidelines" shall, if used herein, mean and refer to those certain architectural standards, landscape standards and other general policies, procedures and criteria which may be adopted by the Board pursuant to this Declaration for use by the Architectural Review Committee in reviewing plans and specifications for proposed Improvements to an Owner's Lot. The Architectural Guidelines are general guidelines and may be amended from time to time by a majority of the Board. A copy of the Architectural Guidelines may be obtained from the Architectural Review Committee.

Section 4. "Articles" shall mean and refer to the Articles of Incorporation of Mission Lane Maintenance Corporation, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

Section 5. "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Regular Assessment" shall mean and refer to an annual charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association;

(b) "Compliance Assessment" shall mean and refer to the charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Common Area or any Improvements which are maintained by the Association as part of a Special Benefit Area for which such Owner (or any member of his/her family, or his/her guests, invitees, tenants or lessees) was responsible, the costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration, and/or any amount due the Association to reimburse the Association for administrative costs attributable to an Owner as provided herein;

(c) "Special Assessment" shall mean and refer to the charge against an Owner and his respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area, of constructing or installing any capital improvements to the Common Area, or of taking any extraordinary action for the benefit of the Common Area (e.g., including but not limited to funding

the reserve accounts) or the membership of the Association pursuant to the provisions of this Declaration; and

(d) "Special Benefit Assessment" shall mean and refer to a charge levied by the Association against an Owner and his respective Lot to cover the expenses incurred by the Association in the operation, maintenance, repair and/or funding of reserves for a portion of the Project designated by Declarant or the Board as a "Special Benefit Area," which expenses are allocable only to the Owners and their Lots within such an Area.

Section 6. "Association" shall mean and refer to Mission Lane Maintenance Corporation, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners.

Section 7. "Association Walls" shall mean and refer to those certain walls, fences and pilasters which were originally constructed by Declarant on the Common Area and/or a Lot which are designated herein, by the Declarant, by the Board, or in a Notice of Annexation by Declarant to constitute Association Walls, and which will be maintained in whole or in part by the Association as provided herein. The Association Walls included in this first Phase of the Project are generally depicted on Exhibit "C" attached hereto. The Association Walls located in a subsequent Phase will be depicted on an Exhibit attached to the Notice of Annexation recorded on such Phase. All depictions of the Association Walls are for illustrative purposes only and the "as-built" condition shall be controlling. Maintenance of walls and fences in the Project, unless identified as an Association Wall on an exhibit to this Declaration or a Notice of Annexation, or by the Board, shall be maintained as a party wall in accordance with applicable standards under California law.

Section 8. "Best Management Practices" or "BMPs" shall mean and refer to the criteria established by the City to implement a Storm Water Pollution Prevention Plan (SWPPP) to provide appropriate stormwater pollution control to prevent all pollutants from contacting storm water and keeping all products of erosion from moving off site into receiving waters, as required by the State Water Resources Control Board (SWRCB) and the National Pollutant Discharge Elimination System (NPDES). Best Management Practices generally require the Association and Owners to be aware of the sensitive natural environment surrounding the Project and to take appropriate action to control storm water runoff from the Project. Compliance with Best Management Practices, as they may be modified from time to time, may be monitored and enforced by any governmental agency having jurisdiction over the Project, including, without limitation, the City, County, Regional Water Quality Control Board, and State Water Resources Board.

Section 9. "Board" shall mean and refer to the Board of Directors of the Association, elected in accordance with the By-Laws of the Association and this Declaration.

Section 10. "By-Laws" shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 11. "City" shall mean and refer to the City of Loma Linda, California, a legal subdivision of the State of California, and its various departments, divisions, employees, and representatives.

Section 12. "Common Area" is used herein as a generic term to mean and refer to: (a) all real and personal property, and to all Improvements thereon, which are owned by the Association; and (b) all real property, and Improvements thereon, over which the Association has an easement (e.g., the landscaped maintenance easement areas depicted in Exhibit "A"), lease and/or which the Association is otherwise responsible pursuant to this Declaration to manage, control and/or maintain for the common use, benefit and enjoyment of all Owners in the Project. If the Project is completed as proposed, the Common Area shall include, without limitation, paseos, common landscaped areas (e.g., parkways adjacent to public streets, medians, street trees, open space, pathways), easements for the maintenance of certain landscaped areas within the Lots (for Phase 1, see Exhibit "A"), easements for the maintenance of the Association Walls (for Phase 1, see Exhibit "C"), clustered mailboxes, trellises and light standards, common recreational facilities (e.g., tot lot with playground equipment, benches, drinking fountain, trash receptacle, enhanced pavement), Project entry monumentation, and such other Improvements as may be designated, from time to time, in this Declaration (as same may be amended), by the Board, and/or set forth in one (1) or more Notices of Annexation recorded in the Office of the County Recorder, pursuant to the Article herein entitled "Annexation of Additional Property." Generally, the Common Area in Phase 1 of the Project consists of that certain real property described in Paragraph B of the recitals, together with the Improvements and easements referenced herein (e.g., Exhibits "A" and "C").

Section 13. "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) owning, maintaining, managing, operating, painting, repairing, and replacing the Common Area; (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees; (c) providing utilities and other services to the Common Area; (d) providing insurance as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; and (g) paying for all other goods and services designated by, or in accordance

with, other expenses incurred by the Association for the benefit of all Owners, and reasonably required for the Association to perform its powers and duties as set forth in this Declaration. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Common Area which must be repaired or replaced on a periodic basis, rather than on a regular annual basis.

Section 14. "County" shall mean and refer to the County of San Bernardino, California, a legal subdivision of the State of California, and its various departments, divisions, employees, and representatives.

Section 15. "Declarant" shall mean and refer to APLL70, LLC, a Delaware limited liability company, its successors, and to any person or entity acquiring all of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment from Declarant which is recorded in the Office of the County Recorder.

Section 16. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

Section 17. "Dispute" shall have the meaning set forth below.

Section 18. "DRE" shall mean and refer to the Department of Real Estate of the State of California, which administers the sale of subdivided lands pursuant to Sections 11000, et seq., of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 19. "Entitlements From City" shall mean any and all agreements, building permits and related permits, conditions of approval, and other documents, instruments or similar writings involving the City which regulate or relate to utilization of real property in the Project.

Section 20. "Express Limited Warranty" shall mean and refer to the express written limited warranty (i.e., 2-10 Home Buyers Warranty) which is to be provided to the initial Owners at the time of acquisition of a Lot from Declarant.

Section 21. "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as amended, from time to time, including any successors thereto.

Section 22. "FNMA" shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

Section 23. "GNMA" shall mean and refer to the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

Section 24. "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Residences, street lights, buildings, awnings, shades, screens, screen doors, skylights, side yard and rear yard fencing, mail kiosks, swimming pools, spas, garages, pavement, driveways, walkways, parking areas, perimeter walls, retaining walls, street trees, private storm drains, flood walls, flag poles, monument signs, patios, grading of a Lot or disturbing the existing grade in any manner, irrigation equipment and all related facilities, exterior air conditioning units, solar panels and related facilities, greenbelts, drainage swales, streetscapes, antennas and related facilities, exterior lighting and any landscaping which, if left in its natural state, would grow to a height in excess of twenty-five feet (25'). Improvements shall also mean and refer to all additions and/or modifications to the exterior of any Residence, including, but not limited to, (a) painting the exterior of any Residence or other structure, (b) changing the roofing material on any Residence, and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, patio covers, patio slabs, balcony covers, decks, gazebos, stairs, screening walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems.

Section 25. "Lot" shall mean and refer to a plot of land within the Project as depicted and/or described on a recorded subdivision map, tract map or parcel map (as such plot of land may be modified by a recorded lot line adjustment), and to all Improvements, including the Residence, constructed thereon. Only those plots of land which are designed and intended for the construction of a Residence and ownership by an individual Owner shall be deemed "Lots." "Lot" shall not mean or refer to any plot of land owned in fee by the Association as Common Area.

Section 26. "Maintenance Guidelines; Maintenance Manual; Maintenance Recommendations" Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Area Improvements that may be provided to the Association by Declarant, the Association or any governmental agency or for the maintenance of a Residence and other Improvements Declarant has constructed on or in a Lot. Maintenance Guidelines include any Maintenance Manual

initially prepared at Declarant's direction, and recommended inspections and maintenance activities for components of the Common Area and any Maintenance Recommendations prepared by Declarant pertaining to a Residence or Lot.

Section 27. "Member" shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," and shall be synonymous with the term "Owner."

Section 28. "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Lot to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as defined in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time). The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

Section 29. "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignor of a Mortgage, beneficiary or vendor.

Section 30. "Mortgagor" shall mean and refer to a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a Deed of Trust and the vendee under an installment land sales contract.

Section 31. "Notice and Hearing" shall mean and refer to written notice and a hearing before the Board or the Architectural Review Committee of the Association, or other tribunal created by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

Section 32. "Notice of Annexation" shall mean and refer to that certain instrument recorded by Declarant utilized to annex all or any portion of the Annexation Property, in accordance with the provisions of this Declaration, thereby subjecting said subsequent Phase to the provisions of this Declaration and to the jurisdiction of the Association.

Section 33. "Owner" shall mean and refer to the record Owner, or Owners if more than one (1), or the purchaser under a conditional sales contract of fee title to, or an undivided interest in, any Lot in the Project. The term "Owner" shall include the Declarant, the vendee under an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time) and the holder of a leasehold estate having a term of twenty (20) or more years, including renewal periods. The foregoing is not intended to

include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

Section 34. "Phase" shall mean and refer to: (a) the Lots and the Common Area; and (b) one (1) or more Lots within the Annexation Property and/or Common Area which are annexed to the Project by the recordation of a Notice of Annexation in the Office of the County Recorder and for which a Final Subdivision Public Report has been issued by the DRE.

Section 35. "Project" shall mean and refer to the Property and to all Improvements, including the Residences, constructed thereon and the Common Area and all Annexation Property which is made subject to this Declaration in accordance with the applicable provisions of this Declaration.

Section 36. "Property" shall mean and refer to all of that certain real property described in Paragraphs A and B of the recitals hereinabove.

Section 37. "Residence" shall mean and refer to the individual dwelling and the related Improvements which are constructed upon a separate Lot and which are designed and intended for use and occupancy as a residential residence.

Section 38. "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws and this Declaration, as they may be amended, from time to time.

Section 39. "VA/FHA" shall mean and refer to the United States Veterans Administration and/or Federal Housing Administration, including the department or agency of the United States government as shall succeed to the VA and/or FHA.

Section 40. Application of Definitions. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments hereto, including, but not limited to, any Notices of Annexation filed or recorded pursuant to the provisions of this Declaration, unless the context shall prohibit such application.

ARTICLE II

GENERAL PLAN OF DEVELOPMENT

Section 1. Introduction. The Declarant has designed Mission Lane as a multi-phase planned residential community, which, if completed as proposed, may consist of seventy (70) Residences, together with various Common Area improvements and related amenities. Nothing in this Declaration, and/or any Notice of Annexation is intended, or shall be interpreted, to constitute an "enhanced

protection agreement" as defined in Section 901 of the California Civil Code. The Project will be developed in a series of phases in accordance with the general plan of development submitted to and approved by the City and the DRE. The Association will maintain the Common Area and will be the management body for the Project, as provided herein.

Section 2. Rights and Obligations of Owners. Each Owner of a Lot in the Project shall automatically become a Member of the Association and shall be obligated for the payment of Assessments to the Association. Subject to the provisions of this Declaration which reserve rights in favor of the Declarant, each Owner, his family members, tenants and invitees will be entitled to the use and enjoyment of the Common Area of the Project.

Section 3. Rights and Obligations of City. Each Owner understands that various provisions throughout this Declaration, including but not limited to Article XIX, discuss certain obligations of the City with respect to the Project.

Section 4. Description of Phase 1 Common Area. The Common Area in Phase 1 of the Project is planned to consist generally of the property and easements described in Recital B and/or depicted on Exhibits "A" and "C." Each Owner of a Lot in the Project shall have a nonexclusive easement appurtenant to his/her Lot for use and enjoyment of all Common Area within the Project, in accordance with the terms and provisions of this Declaration. Subject to applicable restrictions set forth herein and in any Notice of Annexation, the Association shall be responsible for the ownership, if applicable, maintenance, and operation of all Common Area within the Project.

Section 5. Membership in the Association. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a member of the Association, and shall be obligated for the payment of Assessments to the Association. In addition, each Owner, his family, members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Common Area within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

Section 6. Annexation of Subsequent Phases. At such time as subsequent Phases are developed, if ever, Declarant shall annex such Phases to the Project in accordance with the provisions of the Article herein entitled "Annexation of Additional Property."

Section 7. Declarant's Use of Utilities. For as long as Declarant owns a Lot in Tract No. 16323 and/or the Annexation Property, Declarant hereby reserves, together with the right to grant and transfer all or a portion of the same, easement rights to use any private utilities within the Project for, including, but not limited to, construction, access and connection of utilities by

Declarant for purposes of developing the real property comprising the Project, including the Annexation Property.

Section 8. Declarant's Control of Development. In order that the Project be completed and established as a planned residential community, Declarant shall have the sole discretion and control over all aspects of construction of Residences and Improvements owned by itself, and over the selling and marketing of Lots in the Project. Further, Declarant shall have the sole discretion and control to:

(a) Install, construct, modify, alter or remove any Improvements in the Project as approved by the City of Loma Linda;

(b) Redesign or otherwise alter the style (e.g. architectural), size (e.g., adding additional square footage or reducing the square footage of the Residences), color or appearance of any Improvements in any portion of the Project owned or controlled by Declarant as approved by the City of Loma Linda;

(c) Construct such additional Improvements on any portion of the Project owned or controlled by Declarant as approved by the City of Loma Linda;

(d) Subdivide, re-subdivide, grade or regrade any portion of the Property and/or Annexation Property owned or controlled by Declarant as approved by the City of Loma Linda; and/or

(e) Otherwise control all aspects of designing and constructing the Improvements in the Project, and regulating the marketing of Lots in the Project and/or Annexation Property as approved by the City of Loma Linda.

In furtherance thereof, Declarant hereby reserves unto itself, and its successors and assigns, a nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct Improvements, and further reserves for itself the right, (a) until all Lots in Tract No. 16323 and the Annexation Property are initially sold (and escrows have closed), or (b) five (5) years from the recordation of this Declaration, whichever occurs first:

(i) A nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Lots, Residences, and all other Improvements;

(ii) The exclusive right to maintain one (1) or more sales office(s), construction trailer(s), model complex(es), interior design and decorator center(s), construction parking areas, temporary utility facilities and/or lines, and parking area for employees, agents and prospective buyers;

(iii) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and/or Common Area (specifically including the Project entry area), as Declarant deems necessary, irrespective of size, color, shape or materials of such items, except to the extent that the exercise of said exclusive right conflicts with any provision of the City's Municipal Code or other applicable governmental regulations;

(iv) A nonexclusive right to utilize the Common Area and any unassigned open parking spaces in connection with its program for the sale or leasing of Lots in the Project;

(v) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant, as Declarant may, in its sole discretion, deem appropriate;

(vi) The right to conduct any commercial activity upon any Lot owned or controlled by Declarant which reasonably relates to the development, marketing, leasing or sale of the Lots or other property in the Project; and

(vii) The right to utilize the Common Area in the Project and exclude Owners and their guests so long as such exclusion is not unreasonable, for marketing, sales and promotional activities which relate to the leasing or sale of the Lots or other property in the Project. The Declarant agrees to pay any and all maintenance or repair costs associated with the use of the Common Area for marketing purposes and to obtain a reasonable amount of liability insurance naming the Association as an additional insured during such use of the Common Area.

Each Owner hereby grants, upon acceptance of his or her deed to his or her Lot, an irrevocable special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Declaration.

Section 9. Declarant's Duty to Convey Easement Rights. No later than five (5) years after the date of recordation of this Declaration in the County, Declarant or its successors or assigns shall ensure that the City has conveyed to the Association all necessary easement rights over all applicable Lots of Tract 16323 which were dedicated to the City on Tract 16323. Based on the execution of this Declaration by the City, the City acknowledges its obligation to convey such easement rights.

Section 10. Non-Liability of Declarant. The purpose of this Article is merely to describe the proposed general plan of development for the Project. Without limiting the generality of the foregoing, nothing in this Section or elsewhere in this Dec-

laration shall limit the right of Declarant to complete construction of the Project, to alter same or to construct such additional Improvements as Declarant shall deem advisable prior to the completion and sale of all Lots in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Project by an express written assignment recorded in the Office of the County Recorder.

ARTICLE III

RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owners' Easements. Every Owner shall have a nonexclusive right and easement of access and use in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Section 2 below.

Section 2. Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area (including, without limitation, Rules and Regulations pertaining to the use of the tot lot and other common recreational facilities);

(b) The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and/or to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving or repairing the Common Area and related facilities;

(c) The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of the Common Area of any Member, and the persons deriving such rights and easements from any Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent (except such rights as are reasonably required to access said Member's Residence); and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such re-

strictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(d) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer easements over all or any part of the Common Area to any public agency, authority, entity, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by Owners representing sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Common Area shall not require the prior approval of the Members of the Association;

(e) The right of Declarant (and its sales agents, representatives, customers and prospective purchasers) to the nonexclusive use of the Common Area without charge for sales, display access and exhibit purposes related to selling, marketing, showing and otherwise disposing of Lots in the Project, which rights Declarant hereby reserves; provided, however, such use shall cease upon the date that Declarant no longer owns any Lot in the Project, including the Annexation Property. In addition, such use shall not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

(f) The right of the Association, acting by and through its Architectural Review Committee, to enact uniform and reasonable architectural standards;

(g) The right of Declarant to designate additional Common Area, pursuant to terms of the Article herein entitled "Annexation of Additional Property";

(h) The right of the Association to perform and exercise its duties and powers as set forth herein;

(i) Other rights of the Association, the Architectural Review Committee, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration;

(j) The right of Declarant to grant and transfer easements on, over and across the Project, including the Annexation Property, for the development, installation, construction and maintenance of electric, telephone, cable

television, telecommunications and fiber optic system, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project and as may be reasonably necessary for the proper maintenance and/or development of the Project, or conveyance of Lots and/or Common Area;

(k) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by Declarant or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services; and

(l) Any limitations or restrictions on an Owner's right to use his/her Lot so as not to interfere with any and all street light standards, mailboxes, improvement locations, and utility easements affecting such Owner's Lot.

Section 3. Easements for Common Fences. There is hereby created, established and granted an easement appurtenant to the real property in the Project for the placement of all common fences, where such fences were originally installed by Declarant, regardless of whether such fences are located precisely upon the boundary separating two (2) residential Lots or a residential Lot and Common Area. Those Owners who have a common fence which adjoins their Lots and effectively creates the boundary line between such Lots (including the Association and its Common Area) shall equally have the right to use such fence and each shall have the exclusive right to the use of the interior surface of the fence facing his Residence or Common Area. Neither Owner shall drive nails, screws, bolts or other objects more than halfway through any common fence, interfere with the adjacent Owner's use and enjoyment of the common fence, or impair, in any way, the structural integrity of the common fence. In the event that any portion of such fence, except the interior surface of one (1) side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

Section 4. Public Park Areas. As set forth above, the Public Park Areas will be owned by the City and will include certain Improvements approved by the City (e.g., pedestrian lights, irrigation controllers, landscaping, trees, decomposed granite, paved surfaces, enhanced pavement, metal fencing). By accepting a deed to a Lot in the Project, each Owner acknowledges that the City has required that members of the public be allowed free access to the Public Park Areas, notwithstanding the fact that certain Improvements within or related to the Public Park Areas are maintained by the Association. Each Owner is advised that ownership

of a Lot in the Project does not confer any exclusive right to use the Public Park Areas and any of the Improvements constructed thereon. Occupants of residences in the Project may experience noise from use of the Public Park Areas at various times of the day.

Section 5. Easements for Public Services. In addition to the foregoing easements over the Common Area, there is hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Project for purposes of serving the health and welfare of all Owners in the Project.

Section 6. Easements for Community Cable Television, Telecommunication Systems and Alarm System Cabling. There are hereby reserved for the benefit of Declarant, and its successors and assigns, nonexclusive easements for ingress, egress and access on, over, under and across the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of transmission lines and other facilities and equipment for (a) a community antenna television system, (b) telecommunications and fiber optics systems as provided in accordance with the City's Connected Communities Program, and (c) alarm system cabling. Such easements shall be freely transferable to any other person(s) or entity(ies) for the purpose of providing any or all of such services. The exercise of all rights reserved hereunder shall not unreasonably interfere with the Owners' use and enjoyment of the Project.

Section 7. Easements for Unintentional Encroachments. Declarant reserves for its benefit, and the benefit of the Owners, and hereby creates, establishes and grants a nonexclusive easement appurtenant to each Lot on, over and across those portions of any adjacent Lot (whether a residential Lot or a Common Area Lot), not to exceed one foot (1'), for the encroachment by any foundations and footings, and not to exceed three feet (3') for eaves or other overhangs, wing walls and/or chimneys existing as of the date that escrow is initially closed for the sale of said Lot from Declarant to an Owner. Additionally, there is hereby created, established and granted nonexclusive easements appurtenant to any Lot on, over and across those portions of any such adjacent Lot (whether a residential Lot or a Common Area Lot), not to exceed one foot (1'), for the encroachment by any Improvement resulting from any subsequent settling or shifting of any Improvements. All of the aforesaid encroachments shall be measured at the point of encroachment along a line which is perpendicular to the common property line between the affected Lots. Declarant further reserves reciprocal easements for utility services and repairs, replacement, and maintenance of the same over the Lots for the benefit of the Owners. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the Owner's respective Lot.

Section 8. Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, storm drain, water, electricity, gas, television cable (or CATV service), telephone lines, telecommunications and fiber optic systems, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot or provide service to only such Owner's Lot and it shall be the obligation of the Association to maintain those facilities and connections located upon and which provide service to only the Common Area;

(b) Wherever sanitary sewer, water or gas connections, television cables, electricity, telephone lines or telecommunications or fiber optic system lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines. In the event that any damage shall be proximately caused by such entry, said Owner or utility company shall repair the same at its respective expense;

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity, telephone lines or telecommunications or fiber optic system lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot;

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, said Owner shall first contact the appropriate utility company or applicable private purveyor in an effort to resolve the dispute; provided, however, if the dispute remains unresolved, upon the written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who, after Notice and Hearing in which the Owner shall have an opportunity to be heard, shall decide the

dispute, and the decision of the Board shall be final and conclusive on the Owners;

(e) Easements over the Project for the installation and maintenance of electric, telephone, telecommunications and/or fiber optic lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project, or otherwise of record, and/or as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same;

(f) Each Lot granted to an Owner is subject to all easements for utility installation and maintenance, storm drains and other purposes, as more particularly shown on the recorded subdivision map(s) for the Project or otherwise of record or apparent. Any installation or construction of landscaping or structures within said easement areas may be done only in accordance with the terms, conditions and provisions of said easements. Notwithstanding that an Owner may install Improvements (including landscaping) within a utility easement area with the approval of the Architectural Review Committee, each Owner acknowledges that such Improvements (including landscaping) may, unless otherwise prohibited, be removed by the respective utility company, private purveyor, or public agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore any Improvements (including landscaping); and

(g) As required by the City, all utility lines shall be installed and maintained underground.

Section 9. Easements for Maintenance of the Common Area. There is hereby created, established and granted a nonexclusive easement in favor of the Association for ingress, egress and access on, over and across those portions of the Lots in the Project as reasonably required by the Association to perform its maintenance obligations for the Project and Common Area, as more particularly set forth in the Articles herein entitled "Powers and Duties of the Association" and "Repair and Maintenance." In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Project or the Common Area; or (b) bringing an Owner and/or his Lot into compliance with this Declaration in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstand-

ing the foregoing, no advance notice of entry is required in the event of an emergency or regularly scheduled exterior maintenance (e.g., maintenance of the landscaped areas of a Lot - for Phase 1, see Exhibit "A" attached hereto).

Section 10. Easements for Clustered Mailboxes/Light Standards/Trellises. In order to comply with the various requirements of the City and the United States Postal Service, kiosk mailboxes and trellises and/or light standards may be installed on certain Lots within the Project. Easements are hereby created, granted and established on and over the affected Lots, if any, in favor of all Owners in the Project and the United States Postal Service for delivery and deposit of mail, and the utility company, if any, and the Association, for maintenance of the light standards.

Section 11. Easements Over Sidewalks. Declarant hereby covenants for itself, its successors and assigns, that each and every Owner, his tenants and invitees shall have appurtenant nonexclusive reciprocal easements on, over and across all sidewalks located on portions of Lots, if any, immediately adjacent to the public streets within the Project for pedestrian access, use and enjoyment.

Section 12. Easements for Drainage. There are hereby created, granted and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the grading plans for the Project approved by the City, as well as according to the actual, natural and existing patterns for drainage (including, but not limited to, easements to accommodate any "cross-lot drainage," whereby water runoff from one [1] or more contiguous Lots [or Common Area] drains across another Owner's Lot). Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over his Lot, or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his Lot, he will make adequate provisions for proper drainage and obtain all appropriate approvals from the respective governmental authorities, as applicable, and the Architectural Review Committee. Each Owner shall be responsible for cleaning, maintaining, and repairing any open concrete drainage swales constructed by Declarant, if any, on such Owner's Lot and keeping such swales free of debris and any other obstructions to ensure proper drainage in, on, over, under, across and through such swales in a manner consistent with the established drainage patterns created by the precise grading plans for the Project or as otherwise approved by the Architectural Review Committee.

Section 13. Easement for Area Drains. Declarant hereby establishes, grants, and reserves nonexclusive reciprocal easements over the Lots and Common Area for drainage purposes to accommodate the drainage system, including, but not limited to area

drains and pipes, originally installed by Declarant pursuant to the precise grading and construction plans. The Lot Owner served by said drainage system shall be responsible to maintain and preserve said system in an operating condition to ensure proper drainage on, over, under, across and through the yard area of his or her Lot in accordance with the established drainage patterns created by the precise grading plans for the Project, and shall bear the cost of the maintenance, repair or replacement associated with the drainage system which affects his or her Lot. No Owner shall alter or remove the drainage system or modify the grade of the yard area in his or her Lot without the express written consent of the Architectural Review Committee and the City. In the event any portion of the drainage system is damaged, destroyed or not properly maintained, any Lot Owner affected by such drainage system may cause said repair, restoration or maintenance work to be completed and shall be entitled to recover the appropriate expenses from the Lot Owner responsible for such damage, destruction or need for maintenance. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall immediately repair and/or rebuild such drainage system, and shall bear all of the costs thereof, including any cost and/or expense related to personal injury or property damage to any person, Residence, or Lot in the Project.

Section 14. Easements for Construction and Sales. Declarant hereby expressly reserves for itself, for the benefit of its agents, employees and contractors, and for the benefit of its successors and assigns, for a period of five (5) years from the recordation of this Declaration, or until all Lots in Tract No. 16323 and the Annexation Property are initially sold (and escrows closed), whichever occurs first, nonexclusive easements for access, ingress and egress in, on, over, and across the Project as necessary to construct the Improvements, and further reserves the exclusive right to carry on normal sales activity, including the operation of a models complex and sales office, and the display of promotional signs and exhibits in connection with the sale or lease of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements, and rights-of-way in favor of utility companies as may be reasonably necessary for the development of the Project in accordance City requirements.

Section 15. Easements to the City. There is hereby created, reserved, and granted to Declarant, together with the right to grant and transfer same to the City, easements for ingress and egress over the Project for the purpose of permitting the City to perform various obligations and responsibilities within or adjacent to the Project for emergency and public security vehicle purposes.

Section 16. Reservation of Construction Rights by Declarant. In order that the Project be completed and established as a planned residential community, nothing in this Declaration shall limit the right of Declarant to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant; (c) construct such additional Improvements on any portion of the Project owned by Declarant; or (d) otherwise control all aspects of constructing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and the DRE. The foregoing rights of Declarant may be assigned to any successor to all or part of Declarant's interest in the Property and Annexation Property by an express assignment recorded with the County Recorder.

Section 17. Title to the Common Area.

(a) Transfer of Title to Common Area. Declarant hereby covenants, for itself and its successors and assigns, to convey to the Association fee simple title to, or a nonexclusive easement in, as appropriate, the Common Area, free and clear of all liens and encumbrances (i.e., if the Common Area title being conveyed is fee simple), in a particular phase of the Project, if any, prior to or concurrent with a first close of escrow for the sale of a Lot in such Phase, subject to the Protective Covenants set forth in this Declaration or which are of record at the time of the conveyance. Declarant will similarly convey to the Association, from time to time, in fee simple or by easement, any Common Area located in the Annexation Property which is designated in this Declaration or in any Notice of Annexation for conveyance to the Association.

(b) Completion of Common Area. In the event that Improvements proposed to be constructed on any portion of the Common Area so annexed to the Project have not been completed prior to the first close of escrow for a Lot in the property being annexed, as evidenced by a "Notice of Completion" recorded in the Office of the County Recorder, then the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereafter enacted.

(c) Commencement of Association Responsibilities. Except as otherwise provided herein and/or in the grant deed conveying Common Area, the Association's responsibility to maintain the Common Area conveyed to the Association shall commence concurrently with the levy of assessments by the

Association for maintenance of such Common Area. The Association shall not interfere with the performance of any warranty or other contractual maintenance obligations which the contractor or subcontractors of Declarant may be bound to perform. Notwithstanding the foregoing, maintenance performed by such contractors and subcontractors of Declarant shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments. Notwithstanding anything to the contrary herein or in the By-laws for the Board, commencing on the date of the first annual meeting of the Owners, Declarant shall relinquish control over the Association's ability to decide whether to initiate a construction defect claim under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code. Therefore, the Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a defect claim as noted above.

(d) Character of Improvements to Common Area. The nature, design, quality and quantity of all Improvements to the Common Area shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to all Common Area in the Project, whether identified herein or in a Notice of Annexation, conveyed by Declarant, and undertake all maintenance responsibilities for the Common Area as provided herein.

(e) Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute, unless otherwise provided herein, may, by the mutual consent of the parties, be submitted to arbitration and conducted in accordance with the then existing rules for commercial arbitration of the American Arbitration Association. In the event of a demand for arbitration, Declarant shall remit any fee required to initiate the arbitration. However, the costs of arbitration, including attorneys' fees of the prevailing party, shall be borne in such proportions as the arbitration panel shall determine.

(f) Landscape Maintenance District. The properties shall be annexed to a landscape maintenance district ("LMD") with the obligation to maintain landscaping in public rights-of-way, and on portions of private property. The purpose of the LMD is to provide maintenance of landscaping and other facilities on public and private property. Each owner will be

subject to taxes and assessments that are attributable to both administrative expenses and the cost of services provided by the LMD. The taxes and assessments will appear as additional charges on each owner's county property tax bill. Furthermore, the City may at its discretion direct the LMD to assume responsibility for maintenance of the common property, and thereafter the maintenance obligations of the Association with respect to the portions it has failed to maintain will be transferred to the LMD. In that case, individual assessments shall be increased according to an engineer's report to reflect the additional costs incurred by the LMD.

(g) Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute shall be submitted to arbitration in accordance with the applicable provisions below.

Section 18. Reservation of Common Area Easements. Declarant does hereby reserve the right to grant nonexclusive easements over the Common Area in favor of Owners of any Annexation Property which is annexed to the Project pursuant to this Declaration, and, upon the recordation of a Notice of Annexation affecting the Annexation Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Common Area which is a part of said Annexation Property subject to all applicable restrictions set forth herein and in the Notice of Annexation.

ARTICLE IV

THE ASSOCIATION

Section 1. Membership. Every person or entity who or which is an Owner as defined hereinabove shall be a Member of the Association. The foregoing, however, is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred, as provided in Section 6 hereinbelow. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership, as follows:

(a) Class A. Class A Members shall be all Owners, with the exception of the Declarant until such time as the Class B Membership terminates, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. Notwithstanding the foregoing, the City shall also be a limited Member of Class A, with the rights and obligations specified in the Article of this Declaration entitled "City Obligations."

(b) Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned in the Project upon which Declarant is then paying the appropriate monthly Assessments provided for hereinbelow. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(1) The second anniversary of the first close of escrow for the sale of a Lot pursuant to the original issuance by the DRE of the most recently issued Final Subdivision Public Report for a Phase of the Project; or

(2) The fourth anniversary of the first close of an escrow for the sale of a Lot pursuant to the original issuance by the DRE of a Final Subdivision Public Report for Phase 1.

Any action by the Association which must have the approval of the membership of the Association before being undertaken, shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership, so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires (i) the approval of a greater percentage of the voting membership, or (ii) a vote by Members other than Declarant, or (iii) a specific approval percentage of all the Members. Notwithstanding the foregoing, any action by the Association pursuant to the Article contained herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Owners, other than Declarant.

Section 3. Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project as provided for herein shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

Section 4. Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first close of an escrow for the sale of a Lot in a subsequent Phase of the Project.

Section 5. Suspension of Voting Rights. The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

Section 6. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot, and the membership shall be automatically transferred upon the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale, deed in lieu or other remedy set forth in the mortgage. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

Section 7. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

Section 8. Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights with respect to any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

Section 9. Notices. All notices and demands shall be given in writing by personal delivery, express mail, or by certified mail, postage prepaid, and return receipt requested. Notices shall be considered given on the earlier of (a) receipt, if personally delivered or express mailed to the addressee, or to a partner or an officer of the addressee if the addressee is a partnership or corporation, or (b) forty-eight (48) hours following deposit in the United States mail, or (c) verified delivery by facsimile, provided any such "fax" or facsimile is followed by delivery in accordance with (a) or (b) herein. Notices to the Association shall be addressed as determined by the Board.

ARTICLE V

POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project, as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Directors shall be appointed by the Declarant. Thereafter, the Board shall be elected and/or appointed as provided herein or in the By-Laws.

Section 2. Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws, Notices of Annexation, and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for nonprofit, mutual benefit corporations, and shall have, but not be limited to, the following specific powers:

(a) Enforce the provisions of this Declaration (including but not limited to the ability to record a notice of noncompliance or violation as allowed by law), including any amendments thereto, and all contracts or any agreements to which the Association is a party;

(b) Acquire title, manage, maintain, repair and replace all Common Area (including any Common Area which is annexed into the Project) and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Common Area, all as more specifically set forth herein, including but not

limited to, in the Article herein entitled "Repair and Maintenance";

(c) Maintain fire, casualty, liability and worker's compensation coverage, fidelity bond coverage and other insurance coverage pursuant to the terms of that Article herein entitled "Insurance";

(d) Obtain, for the benefit of the Common Area, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or CATV) television service;

(e) Grant easements or licenses, where necessary, for utilities and sewer facilities over, on and across the Common Area to serve the Project;

(f) Pay all taxes and special assessments which would be a lien upon the entire Project or the Common Area, and to discharge any lien or encumbrance levied against the entire Project or the Common Area;

(g) Levy and collect Assessments on the Owners of all Lots in the Project in which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association";

(h) Pay for reconstruction of any portion of the Common Area damaged or destroyed;

(i) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys, budget preparers, and accountants) as necessary for the operation of the Project and administration of the Association;

(j) Enter into any Lot when necessary in connection with maintenance or construction for which the Association is responsible;

(k) Subject to notification to the DRE, contract with Declarant, its successors or assigns, for the purpose of entry into a maintenance and/or subsidy agreement, made by and between Declarant and the Association, for the purpose of temporarily reducing and/or abating the financial obligations of Owners in the Project;

(l) Purchase such other labor, services, materials, supplies and the like, as needed for the proper maintenance of the Common Area and/or proper operation of the Association;

(m) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of any portion of the Project;

(n) Grant exclusive easements to Owners over portions of the Common Area;

(o) Execute City approved lot line adjustments (and corresponding deeds), enter into a maintenance and/or other agreement with Declarant or a third party, grant fee title to or easements over the Common Area to Declarant or a third party, and/or receive fee title to or an easement over real property owned by Declarant or a third party as reasonably necessary due to those conditions in the field where it is not readily apparent where Lot lines are located and the respective party's maintenance responsibilities commence and end, and such adjustments, deeds and/or agreements will promote a clearly defined and uniform maintenance plan by the respective parties;

(p) Grant easements or licenses to any public agency, governmental entity or utility, where necessary, for utilities and sewer facilities on, over and across the Common Area to serve the Project for purposes consistent with the use and enjoyment of the Common Area or the Project for residential purposes;

(q) Subject to compliance with Section 1354 of the California Civil Code, as same may be amended from time to time, to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (i) enforcement of the Declaration, Rules and Regulations and By-Laws; (ii) damage to the Common Area; (iii) damage to the Lots which arises out of, or is integrally related to, damage to the Common Area that the Association is obligated to maintain or repair;

(r) As applicable, and subject to the Express Limited Warranty, comply with terms and provisions of California Civil Code Section 1375, as amended, in connection with any potential litigation based upon a claim for defects in the design or construction of the Common Area;

(s) Execute all necessary documents in order to effectuate the Express Limited Warranty, including, without limitation, any Express Limited Warranty validation form;

(t) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration

of its affairs for the specific purposes of meeting its duties as set forth in this Declaration; and

(u) Without any limitation of the foregoing powers, (1) operate, maintain, and inspect the Common Area and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (2) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (Declarant recommends at least an annual review).

Section 3. Duties. Notwithstanding the Association's obligations, as more specifically set forth in the Article herein entitled "Repair and Maintenance," the Board shall perform and execute the following duties for and on behalf of the Association:

(a) Own, maintain and/or operate the Common Area (including, without limitation, the Public Park Areas in accordance with the provisions of the Article entitled "City Obligations") for the common use and benefit of all Owners in the Project;

(b) Provide or cause to be provided (e.g., by a public or private entity) water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area (including, without limitation, electricity to operate the pedestrian lights and irrigation controllers and irrigation water in the Public Park Areas, as set forth in the Article entitled "City Obligations") and, if not separately metered or provided, for the Lots;

(c) Provide insurance for the Association and its Members in accordance with the provisions of the Article hereinbelow entitled "Insurance" and distribute appropriate notices regarding the Association's compliance with Civil Code Section 1365, as the same may be amended, from time to time;

(d) Accept, as part of the Project, all property included in or annexed to the Project, in accordance with the terms and provisions of this Declaration, and to accept all Owners as Members of the Association. In addition, the Association shall accept all Common Area, conveyed, leased or otherwise transferred to it, if any, by Declarant, its successors or assigns, or appropriate governmental agency;

(e) Maintain and repair all portions of the Common Area in a neat, clean, safe, attractive, sanitary and orderly condition at all times and paint, maintain, repair and replace all of the Common Area Improvements so as to keep same in a neat, clean, safe, attractive, sanitary and orderly condition at all times. Except as approved by the City (if such approval is required in the Project conditions of approval), the Association shall not modify the landscaping, structures,

amenities, and/or hardscape within the Common Areas. Without limiting the generality of the foregoing, the Association shall be responsible for maintaining the paseos, common landscaped areas (including parkways adjacent to public streets, medians, street trees, open space, pathways), easements for the maintenance of certain landscaped areas within the Lots (for Phase 1, see Exhibit "A" attached hereto - e.g., the front yard areas of each Lot which includes that landscaped area in front of the front facade of the residence which extends the width of the Lot), easements for the maintenance of the Association Walls (for Phase 1, see Exhibit "C" attached hereto), clustered mailboxes, trellises and light standards, recreational facilities (e.g., tot lot with play-ground equipment, benches, drinking fountain, trash receptacle, enhanced pavement), Project entry monumentation, and all related systems in a condition comparable to the condition initially approved by the City. In the event any maintenance or repairs to the Common Area are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

(f) In addition to all other provisions set forth herein respecting the maintenance of the Common Area, maintain sewers (unless public) and Common Area lighting facilities, if any, in a condition comparable to the condition initially approved by the City;

(g) Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

(h) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(i) Unless otherwise provided in the by-laws for the Association, cause financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association, regardless of the number of Members or the amount of assets of the Association, as follows:

(1) A pro forma operating statement (budget) for each fiscal year shall be distributed within the time period specified by statute prior to the beginning of the

fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year), and shall contain the following information:

i) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

ii) A summary, printed in bold type, of the current status of the Association's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, and prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2.5, to the extent that such provisions are effective);

iii) A statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2, to the extent that such provisions are effective) as to both of the following:

a) Whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major component (e.g., Improvement to the Association Property) or to provide adequate reserves therefor; and

b) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement of repairs, or alternative mechanisms.

iv) A general statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2, to the extent that such provisions are effective) setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Common Area Improvements; and

v) A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major Improvements to the Common Area, or to provide adequate reserves therefor.

Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice, in at least 10-point bold type on the front page, that the pro forma budget is available at the business office of the Association, or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Association. If any Member requests that a copy of the pro forma budget required herein be mailed to said Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, and mailed within five (5) days of the receipt of said request;

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Association's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Information, if any, required to be reported pursuant to Sections 8322 and 1365 of the California Corporations and Civil Codes, respectively, as same may be amended from time to time.

This annual report shall ordinarily be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles, for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00). However, if for any reason the report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association;

(4) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association," which shall be distributed within the time period required by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year); and

(5) A summary of the Association's general liability insurance policy, earthquake and flood insurance policy, if one or more have been obtained, and liability coverage policy for the Board, which includes statements and information required under California Civil Code Section 1365(e), as same may be amended from time to time. Currently, such items of disclosure include the following:

i) general liability earthquake and flood insurance policies (if one or more have been obtained); (1) the name of the insurer; (2) the type of insurance; (3) the policy limits of the insurance; and (4) the insurance deductibles.

The Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (i) above have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any of those policies. If the Association receives any notice of nonrenewal of a policy described in the subparagraph above, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent the information noted above is described within the respective insurance policies, the Association may distribute such information to the Members and be in compliance with the disclosure requirements of the referenced Civil Code Section. Notification regarding cancellation or policy renewals must comply with Civil Code Section 1365(e)(2), as same may be amended from time to time. Currently, the summary distributed pursuant to Subparagraph (i) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by Subdivision (e) of Section 1365 of the California Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of

reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage."

(j) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of amounts collected as reserves;

iii) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

iv) An income and expense statement for the Association's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

Withdrawal of funds from the Association's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Association who is not also a member of its Board. As used in this Section, "reserve account" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Common Area which the Association is obligated to repair or replace on a periodic basis, rather than on a regular annual basis. Except as may otherwise be allowed pursuant to Civil Code Section 1365.5(c), the Board shall not use any funds collected and budgeted as "reserve" moneys for any costs and/or expenses that are not related to repair and/or replacement costs for those elements of the Common Area that must be repaired and/or replaced on a periodic basis. The Board may transfer any interest earned in

all reserve accounts into the Association's general operating account in order to satisfy all or a portion of the income tax liability based on such interest income. Notwithstanding the foregoing, temporary transfer of funds may occur in compliance with Civil Code Section 1365.5, as same may be amended from time to time. In the event reserve funds are temporarily transferred to pay for litigation, the Board shall comply with the disclosure and notification requirements of Civil Code Section 1365.5(d), as same may be amended from time to time.

(k) At least once every three (3) years, cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Association budget for any fiscal year of the Association. In connection with such study, the Board shall cause to be conducted, if required by law, a visual inspection of the accessible areas of the major components of the Common Area which the Association is obligated to repair, replace, restore, or maintain. The Board shall consider and implement, as the Board determines appropriate, any necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365.5(e) of the California Civil Code, as the same shall be amended, from time to time;

(l) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 4 hereinbelow;

(m) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Area, as more particularly described herein. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

(n) Enforce and abide by all applicable provisions of this Declaration, the Articles, By-Laws, the Express Limited Warranty, all such Rules and Regulations of the Association and Architectural Review Committee, and of all other documents pertaining to the ownership, use, management and control of the Project;

(o) Enforce all applicable provisions of this Declaration, the Articles, By-Laws and such Rules and Regulations of the Association and Architectural Review Committee, and of all other documents pertaining to the ownership, use, management and control of the Project;

(p) Give notices in writing to FHLMC, FNMA and GNMA, and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein;

(q) Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and the Articles for the Association, together with the pro forma budget, an insurance policy summary, a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request, the most recent financial statement, the Association's current Regular and Special Assessments, and any change in the Association's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date the disclosure is provided pursuant to this Section. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the actual cost to prepare and reproduce the requested documents. In addition, the Board shall make available, as required by law, during normal working business hours, upon request under reasonable circumstance, to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of a first Mortgage of any Lot, current copies of this Declaration, the Articles, the By-Laws, the Rules and Regulations governing the Lot, a true statement, in writing, setting forth the amount of the Association's current regular and special assessments and fees, any assessments, monetary fines and/or penalties levied upon the Member's interest in the Project that are unpaid on the date of the statement, and information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Member's interest in the Project, and all of the books, the membership register, including mailing addresses and telephone numbers, records and financing statements of the Association;

(r) Elect the officers of the Association and fill any vacancies on the Board, except if such vacancy is created by the removal of a Director;

(s) Appoint the Members to the various Committees formed by the Board (e.g., the Nominating Committee, the Architectural Review Committee, etc.) as more particularly set forth herein or in the By-Laws;

(t) Cause a summary of the provisions of Section 1354 of the California Civil Code, as same may be amended from time to time, regarding alternative dispute resolution prefixing requirements and which specifically reference Section 1354, to be prepared and distributed (as required by law, if at all) to each Member of the Association. The summary shall be provided either at the time the pro forma operating budget is distributed herein or in the manner specified in Section 5016 of the California Corporations Code, as same may be amended from time to time;

(u) Periodically review and revise the Maintenance Guidelines, if any, as the Board may deem reasonable and prudent to adjust to the changing needs of the Project. Comply with any and all Maintenance Guidelines provided by the Declarant or recorded by Declarant against the Project or portion thereof;

(v) Comply with the provisions of California Civil Code Section 1375, as same may be amended from time to time, as provided hereinbelow;

(w) Cause a notice regarding "Assessments And Foreclosure" to be prepared and annually distributed to each Member of the Association in accordance with California Civil Code Section 1365.1, as the same may be amended from time to time. Except as otherwise provided in California Civil Code Section 1365.1, as the same may be amended from time to time, the notice shall be printed in 12-point type and shall be distributed during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year;

(x) Without any limitation of the foregoing duties, (1) operate, maintain, and inspect the Common Area and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (2) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (e.g., at least an annual review);

(y) Comply with the Association's duties and obligations (and benefits) with respect to the Express Limited Warranty;

(z) As required by the City, on or before January 1st of each year, file with the City's Community Development Department a document setting forth the names, addresses and telephone numbers of at least one member of the Board and, where applicable, the manager of the Project, so that the City may contact the Association in the event of an emergency or a violation of the provisions of this Declaration in which the City has an interest.

(aa) If required by applicable law [e.g., California Civil Code Section 1365(d), as the same may be amended from time to time, or any successor statute], cause a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of Assessments against Members to be prepared and annually distributed to Members within the time period required by statute prior to the beginning of the Association's fiscal year;

(ab) If required by applicable law [e.g., California Civil Code Section 1378(c), as the same may be amended from time to time, or any successor statute], cause a notice of any requirements for Association approval of physical changes to Condominiums or Common Property to be prepared and annually distributed to Members; and

(ac) If required by applicable law [e.g., California Civil Code Section 1369.590, as the same may be amended from time to time, or any successor statute], cause a summary of the provisions of Article 2 of Chapter 7 of Title 6 of Part 4 of Division 2 of the California Civil Code (commencing with Section 1363.510) to be prepared and annually distributed to Members.

Section 4. Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Association:

(a) Retain the services of a manager for the Project and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Common Area regardless of whether such other personnel are employed directly by the Association or otherwise;

(b) Remove or replace any Improvement that extends into the Common Area under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Lot involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Common Area without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Lot or Owner thereof to keep such Lot and/or Owner in compliance with this Declaration and/or any Notice of Annexation; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed to the Owner of such Lot as a Compliance Assessment; provided further, however, that nothing herein shall permit

the Association to assess the Owners for any new Improvements to the Common Area, except as otherwise provided in this Declaration; and

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Area, for the benefit of the Owners or for the enforcement of this Declaration.

Section 5. Dispute Notification and Resolution Procedure. Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. Declarant intends to resolve any action or claim by, between or among the Declarant, or any director, officer, partner, attorney, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties"), the Association, and any Owner, relating to or arising out of the Project, this Declaration or any other agreements between the Declarant Parties, Association, and an Owner (unless any such agreement specifies another form of dispute resolution), the sale of the Lots in the Project, the Express Limited Warranty, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects (e.g., latent or patent defects), surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of the Project, or disputes which allege breach of contract, negligent or intentional misrepresentation or fraud, nondisclosure, or breach of an alleged duty of good faith and fair dealing (each a "Dispute"), amicably and without the necessity of time consuming and costly litigation. Accordingly, the Association and all Owners shall comply, to the extent not inconsistent with Civil Code Section 1354 and/or 1375, as same may be amended from time to time, and excluding actions taken by the Association against Declarant to collect delinquent Assessments, and any action involving any Common Area completion bonds, where the amount in controversy is greater than Five Thousand Dollars (\$5,000), with the following claim resolution procedures:

(a) Notice. Any person with a Dispute shall notify the Declarant in writing of the claim (by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the dispute is directed), which writing shall describe the

nature of the claim and any proposed remedy (the "Claim Notice").

(b) Right to Inspect and Right to Corrective Action. Commencing on the date the Claim Notice is delivered and continuing until the Dispute is resolved, the Declarant and its representatives shall have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Project to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Declarant. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within or near the Project to discuss the Dispute. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives, as noted above, shall have full access to the property that is subject to the Dispute and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant, which rights shall continue until such time as the Dispute is resolved as set forth herein. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action. Nothing set forth in this Section 5 imposes any obligation on Declarant to inspect, repair or replace any items or alleged defects for which Declarant is not otherwise obligated under applicable State and federal law or any limited warranty provided by Declarant in connection with the sale of the Lots.

(c) Arbitration. Except as otherwise provided by the non-adversarial procedures noted in paragraphs (a) and (b) above, any and all claims, disputes, and controversies arising under or relating to this Declaration or the Project, or to any defect in or to the Project (including the Lots, Residences and Common Area), or the sale of the Lots by Declarant, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract (including the arbitration provisions of the purchase and sale contract), and breach of any alleged duty of good faith and fair dealing, shall be submitted to binding arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter "CAS") in effect at the time of the request for arbitration unless otherwise provided by Declarant or the Express Limited Warranty. If CAS shall for any reason be unable or unwilling to conduct, or is disabled from conducting such arbitration, the arbitration shall be conducted by and pursuant to the rules of the American Arbitration Association

applicable to home warranty arbitration proceedings in effect at the time of the request for arbitration. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any State or Federal court of competent jurisdiction.

The initiation or participation by any party in any judicial proceeding shall not be deemed a waiver of the right to enforce this arbitration provision, and notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration provision. Any party shall be entitled to recover reasonable attorney's fees and costs incurred in enforcing this arbitration provision, and the arbitrator shall have sole authority to award such fees and costs.

The administration fee charged by the arbitration service shall be borne by Declarant, Declarant's Parties, and Owner as specified in the "Warranty Booklet" applicable to the Express Limited Warranty originally provided to Owners by Declarant. Additional fees may be assessed in accordance with the arbitration rules and fees.

Owners expressly agree that this arbitration provision involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act, (9 U.S.C. Section 1, et seq.), now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provisions of the rules of the arbitral association under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

If any provision of this arbitration provision shall be determined to be unenforceable by the arbitrator or by the court, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(d) Judicial Reference. In the event that any court of competent jurisdiction determines that the arbitration provisions set forth in subsection (c) hereinabove are unenforceable with respect to any claim, dispute, or controversy arising under or relating to this Declaration, including, without limitation, any claim based on contract, tort or statute arising out of an alleged defect (i.e., alleged latent or patent construction defect, surveys, soils conditions, grading, specifications, construction defects, installation of improvements, or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the conditions of the Project), such dispute shall be resolved by

general judicial reference pursuant to California Code of Civil procedure Sections 638 and 640 through 645.1 or any successor statutes thereto, and as modified or as otherwise provided in this paragraph (d). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding unless they are satisfied that all necessary and appropriate parties will participate (including all parties against whom such party would have necessary or permissive cross-claims or counterclaims, any insurer of Declarant or Declarant's contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project that would be liable to provide insurance coverage to Seller for any claim arising out of the Dispute). In any judicial reference proceeding, each party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other expenses of the judicial reference proceeding, including the referee's fees, shall be initially borne by Declarant and Declarant Parties; however, at the conclusion of the proceeding, the referee shall have the power to reallocate these costs and expenses among the parties. This provision does not modify any provision of any other contract establishing a different allocation of costs between the parties.

The dispute resolution procedure established herein is implemented in accordance with the philosophy of the Federal Arbitration Act (9 U.S.C. Section 1 et. seq.) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The judicial reference provision is to be interpreted and enforced as if it established a proceeding authorized by the Federal Arbitration Act. Parties interpreting this judicial reference provision shall follow the federal and state court rulings which provide that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of arbitrable issues be resolved in accordance with Allied-Bruce Terminix Companies v. Dobson, 115 S.Ct. 834 (1995). References herein to California Code Sections are not to be interpreted as a waiver of rights created under federal law.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") or American Arbitration Association ("AAA") for judicial reference (or any other entity offering judicial reference dispute

resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(1) The proceedings shall be heard in the County in which the Project is located;

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(3) Any dispute regarding the selection of the referee shall be resolved by CAS, JAMS or the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;

(4) The referee may require one (1) or more pre-hearing conferences;

(5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial court judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court.

(e) Compliance. The Association and each Owner covenant to comply with the procedures described herein. If the Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in herein. The procedures set forth herein shall not apply to any action taken by the Association against Declarant for delinquent Assessments, or in any action involving any

Common Area completion bonds. Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve the Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until they have complied with the procedures described herein.

(f) Miscellaneous. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the matter shall be considered communications undertaken in the course of effecting a settlement or compromise, as such shall not be admissible as an admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

(g) Inspection Easements. Declarant reserves easements to enter the Common Area and any Lot (including the Residence thereon), including the interior of the Unit, to inspect those areas and to conduct destructive testing referred to in California CIVIL CODE Section 1375(d). However, the Declarant shall notify the Association and/or the Owner of the Unit (as appropriate) of at least three alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and the Declarant shall give the Association and/or Owner (as appropriate) the opportunity to specify which date and time is acceptable to the Owner. Should the Association and/or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then the Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association and/or Owner. Alternatively, the Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

DECLARANT, THE ASSOCIATION AND EACH OWNER SHALL USE THE PROCEDURES ESTABLISHED IN THIS SECTION TO RESOLVE ALL ALLEGED DEFECTS AND DISPUTES AND SHALL BE DEEMED TO WAIVE THEIR RIGHTS TO RESOLVE ALLEGED DEFECTS AND DISPUTES IN ANY OTHER MANNER. PURSUANT TO THIS SECTION, DECLARANT, THE ASSOCIATION, AND EACH OWNER ARE GIVING UP THEIR RIGHT TO HAVE ALLEGED DEFECTS AND DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

Section 6. Notification by Association of Defects.

The Board agrees that in the event of any alleged defect in any improved Common Area for which the Association believes the Declarant may be responsible, the Board will provide Declarant with written notice of such defect in accordance with Civil Code Section 1375, as the same may be amended, or, if provided by Declarant, its nonadversarial dispute resolution procedure. Declarant shall have a reasonable opportunity to inspect such alleged defect, and if Declarant agrees with the Board (or otherwise elects to perform the work) to repair, replace or otherwise cure any defect in workmanship and/or material. The Association acknowledges and agrees that Declarant, (or its authorized agents), shall be entitled at its sole discretion to determine the material and methods to be used in affecting such repair, replacement or cure.

Section 7. Delegation of Duties.

In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 8.

Right of Entry for Emergency. The Board, any person authorized by the Board, Declarant (so long as it owns an interest in the Project), or any Owner may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association and/or Owner shall repair the same at its expense.

Section 9.

Right of Entry for Repairs. Except as otherwise provided herein, the Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Lot to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Common Area or an adjoining Lot. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

Section 10.

Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association and a majority of the votes residing in Members, other than the Declarant:

- (a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the Department of Veterans Affairs and the Federal Housing Administration (hereinafter referred to as the "VA/FHA") and are consistent with provisions herein;;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish equipment and services of not to exceed five (5) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(d) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(e) Filling a vacancy on the Board created by the removal of a Director;

(f) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time

to time, incurring dispute resolution expenses, including without limitation attorneys' fees, where the Association initiates dispute resolution proceedings or is joined as a plaintiff in dispute resolution proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained herein, (ii) enforce the architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration; or

(g) Amending or limiting the Association's duties and obligations (and benefits) with respect to the Express Limited Warranty.

(h) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time to time, incurring litigation expenses, including without limitation attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained herein, (ii) enforce the architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration.

Section 11. Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes over those portions of the Common Area upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved. In addition, the Board, for and on behalf of the Association, may grant exclusive easements to Owners for use and enjoyment over portions of the Common Area, as the Board determines is reasonable.

Section 12. New Improvements. Except as otherwise provided in this Declaration, and subject to the Article herein entitled "Architectural Review - Approval," the Association may construct new Improvements or additions to the Common Area or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of the Owners in the Project as to the maximum total cost therefor shall first be obtained in accordance with the appropriate

provisions herein, and provided that no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment on all Owners in the Project for the cost of such work. Notwithstanding the foregoing, if the new Improvements or the demolition of existing Improvements relates to Special Benefit Improvements, only the vote or written consent of Owners representing a majority of Lots within such Special Benefit Area need to be obtained, and the Board shall levy a Special Assessment solely on the Owners in the respective Special Benefit Area for the cost of such work.

Section 13. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area, signs, parking restrictions and enforcement on those portions of the Project other than the public streets, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Review Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded. The Association shall adopt rules and regulations ("Rules and Regulations") that are not inconsistent with the provisions of this Declaration and that are subject to Civil Code Sections 1357.100 et seq. regarding "operating rules." The Rules and Regulations shall include but not be limited to the use of the Common Area and of the Project.

Section 14. Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration, or as required by law, no right, power or responsibility conferred on the Board or the Architectural Review Committee by this Declaration, the Articles or the By-Laws, shall be construed as a duty or obligation

charged upon the Board, the Architectural Review Committee, any member of the Board or the Architectural Review Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct;

(b) Personal Liability Limitation. No person who suffers injury, including, but not limited to, bodily injury (including, without limitation, emotional distress or wrongful death) or property damage or loss as a result of the tortious act or omission of a volunteer Board member or volunteer Association officer shall recover damages from such Board member or officer if all the following conditions are satisfied:

(1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Lots;

(2) The act or omission was performed within the scope of the Board member's or officer's Association duties;

(3) The act or omission was performed in good faith;

(4) The act or omission was not willful, wanton or grossly negligent; and

(5) The Association maintained and had in effect at the time the act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance which included coverage for general liability for the Association and individual liability of officers and Directors of the Association for negligent acts or omissions in such capacity, and both types of coverage were in the amount of at least Five Hundred Thousand Dollars (\$500,000.00).

(c) Indemnification. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened

action against such person to impose liability on such person for his Official Acts, provided that:

(1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interests of the Association; and

(2) In the case of an action or threatened action by or in the name of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

ARTICLE VI

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Area for which such Owner was responsible and costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; (d) Special Benefit Assessments; and (e) such other assessments as the Association may periodically establish. Except as otherwise provided by law, the Regular, Special and Special Benefit Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment, Special Assessment and Special Benefit Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall

also be the personal obligation of the Owner of such property at the time when the Assessment fell due. Each Compliance Assessment levied against an Owner, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all Owners in the Project, and to maintain and improve the Common Area. The Association, by and through the Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of its powers and duties set forth in this Declaration, the By-Laws and the Articles. In connection therewith, the Association shall not impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. Regular Assessments may be collected on a monthly installment basis.

Section 3. Regular Assessments - Basis. Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expenses of the Association for any fiscal year shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to assessment. During the period the Project is being built out, Declarant may annex one or more Phases into the Project in accordance with the provisions of this Declaration. Until the first day of the fiscal year immediately following the close of escrow for the sale of the first Lot in the Project to an Owner, the maximum Regular Assessment shall be as set forth in the budget reviewed and approved by the DRE. Notwithstanding the commencement for payment of Regular Assessments, or any other provisions of this Declaration, Declarant and any other Owner of a Lot which does not include a structural Improvement for human occupancy shall be exempt from the payment of that portion of any Assessment (e.g., Regular Assessment) which is for the purpose of defraying operating expenses and reserves directly attributable to the existence and/or use of such structural Improvements. This exemption shall include, but shall not necessarily be limited to, that portion of any Assessment attributable to roof replacement, exterior maintenance, exterior walkway and carport lighting, refuse disposal, cable television and domestic water supplied to Residences. This exemption shall be in effect only until the earliest to occur of: (a) the recordation of a notice of completion for the structural Improvements; (b) the occupation or use of the Residence; or (c) the completion of all elements of the Lot which the Association is obligated to maintain,

if any. Declarant and any Owner shall also be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area facilities that are not complete at the time Assessments commence. This latter exemption shall only be in effect as to a particular Common Area facility until the earlier of: (a) the recordation of a notice of completion for such Common Area facility; or (b) the placement into use of the particular Common Area facility. Subject to the limitations of California Civil Code Section 1366, as same may be amended, from time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for the immediately preceding fiscal year may be approved by DRE and/or the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Owners, constituting a quorum and casting a majority of affirmative votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this entire Section 3, a quorum means Owners representing more than fifty percent (50%) of the of the total voting power of the Association;

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Owners, constituting a quorum and casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and Section 7613 of the Corporations Code; and

(c) The Assessment increases limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Common Area that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Common Area that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning such increase to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of the extraordinary expenses; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Lot by the Association as a Regular Assessment, plus any amount paid by the Declarant as a subsidy or pursuant to any subsidy or maintenance agreements, to the extent such subsidy payments offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of the Declarant and the DRE. Notwithstanding the foregoing, following the annexation of a subsequent Phase of the Project, pursuant to the provisions set forth in this Declaration, the maximum Regular Assessment may be automatically increased (or decreased) for all Lots in the Project on the first day of the month following the first close of an escrow for the sale of a Lot in said Phase without any approval of the Members of the Association to the amount recommended by the DRE in connection with its review and processing of the Association budget for such Phase. The Association may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

Section 4. Special Assessments for Capital Improvements. In addition to the Regular Assessments authorized above, the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%)

limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

(a) Extraordinary expenses required by an order by a court of competent jurisdiction;

(b) Extraordinary expenses for the maintenance or repair of Common Area that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(c) Extraordinary expenses necessary to repair or maintain the Common Area that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%) limitation pursuant to this Section, the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth: (1) the necessity of said Special Assessment; and (2) the justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared.

Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

Section 5. Compliance Assessments. A Compliance Assessment may not be characterized nor treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code; provided, however, at such time as sales of Lots in the Project are no longer governed by regulations adopted by the DRE, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments or imposed for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Member or the Member's guests or tenants were responsible.

Section 6. Special Benefit Assessments. Special Benefit Assessments shall mean and refer to a charge levied by the Association against an Owner and his respective Lot to cover the expenses incurred by the Association in the operation, maintenance, repair, and/or funding of reserves as to a portion of the Project designated herein, by the Board, or in a Notice of Annexation as a "Special Benefit Area" or which is identified or referred to as an area or facility benefitting primarily the Owners within such an Area. These expenses shall be chargeable only to Owners in a

Special Benefit Area, and may include, without limitation, the following:

(a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;

(b) Utilities or services for the benefit of Owners within the Special Benefit Area;

(c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Association within a Special Benefit Area; and

(d) Unpaid Special Benefit Assessments.

The Association shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, and shall set forth the amount and payment schedule of the Special Benefit Assessments. Increases in Special Benefit Area Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Special Benefit Area Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall obtain the approval of Owners constituting a quorum and casting a majority of affirmative votes at a meeting or election conducted in accordance with Section 7510 *et. seq.*, and 7613 of the Corporations Code. For purposes of this Section, a quorum means Owners representing more than fifty percent (50%) of the voting power of the Members of Lots affected by the Special Benefit Area Assessment. The Assessment increase limitation set forth hereinabove does not apply to increases in Special Benefit Area Assessments related to emergency situations that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared which determined the amount of the Special Benefit Area Assessments.

Section 7. Date of Commencement of Regular Assessments: Due Dates. Subject to the terms of any maintenance and/or subsidy agreement entered into by the Association and Declarant, the Regular Assessments provided for herein shall commence in each Phase on the first day of the first month following the first close of escrow for the sale of a Lot in such Phase, or on the first day of the first month following the first occupancy of a Lot in such Phase pursuant to a rental or lease agreement with Declarant, or its authorized agents, whichever occurs first. Except as otherwise provided in this Article, the first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the

Regular Assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of each Assessment period. The due dates shall be established by the Board. Notwithstanding any other provisions of this Declaration, until the earlier to occur of: (a) the recordation of a Notice of Completion of an Improvement to the Common Area; or (b) the placement into use of the Common Area, each Owner (including Declarant) may be declared by the Board to be exempt from paying that portion of the Regular Assessment which is directly attributable to expenses and reserves to be incurred by the Association in the maintenance, operation and repair of such Common Area.

Section 8. Collection of Assessments. Except as otherwise provided above or in any subsequent Notice of Annexation, Regular and Special Assessments shall be levied at a uniform rate for all Lots and may be collected on a monthly basis. If any installment of a Regular Assessment is less than the amount assessed and the payment does not specify the Association funds or fund into which it should be deposited, the receipt by the Association from that Member shall be credited in order of priority first to the operating fund, until that portion of the Regular Assessment has been satisfied, and second to the reserve fund.

Section 9. Payment of Assessments Under Protest.

(a) The exception for disputes related to Assessments in Subdivision (b) of Section 1354 of the California Civil Code shall not apply if, in a dispute between the Owner of a Lot and the Association regarding the Assessments imposed by the Association, the Owner of the Lot chooses to pay in full to the Association all of the charges listed as follows:

- (1) The amount of the Assessment in dispute;
- (2) Late charges;
- (3) Interest; and
- (4) All fees and costs associated with the preparation and filing of a "Notice of Delinquent Assessment," including all mailing costs and including attorneys' fees not to exceed Four Hundred Twenty-Five Dollars (\$425.00) (unless a greater amount is allowed by California law), as may be amended by the Board with only a majority vote of the Board.

In addition to paying the above-referenced charges, the Owner must state by written notice that the amount is paid under protest, and the written notice must be mailed by certified mail not more than thirty (30) days from the recording of a Notice of Delinquent Assessment in accordance with Section 1367 of the California Civil Code. In those instances, the Association shall inform the Owner that the Owner may resolve the dispute through alternative dispute

resolution, as set forth in Section 1354 of the California Civil Code, civil action, and any other procedures to resolve the dispute that may be available through the Association.

(b) The right of any Owner of a Lot to utilize alternative dispute resolution under Section 1366.3 of the California Civil Code may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years. Nothing within Section 1366.3 of the California Civil Code shall preclude any Owner of a Lot and the Association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this subsection. The Owner of a Lot may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association on the total amount paid under Subparagraphs (1) through (4) above if it is determined through alternative dispute resolution that the Assessment levied by the Association was not correctly levied.

Section 10. Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Association, notice of any increase in Regular, Special, and/or Special Benefit Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

Section 11. Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

Section 12. Delivery by Owner. Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to the Lot or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, or as may be amended, from time to time, give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and Articles of the Association, and a true statement, in writing, from the Board as to the amount of the Association's current Regular and Special Assessments and fees, as well as any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date the statement is issued, and any change in the Association's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 13. Delivery by Declarant. Within ninety (90) days following the first close of escrow for the sale of a lot in the Project, or as soon as reasonably obtainable, the Declarant shall provide the Association with copies of the (1) recorded tract

map for the project; (2) Common Area easement and/or grant deeds; (3) this Declaration; (4) filed Articles of Incorporation; (5) the Association's by-laws; (6) rules and regulations or architectural guidelines adopted by the Association, if any; (7) notice of completion certificates for Common Area, if any; (8) completion bond(s) naming the Association as a beneficiary, if any; (9) warranties for Common Area equipment or fixtures, if any; (10) insurance policies obtained for the Association; and (11) membership register, to the extent it is available and if required by law.

Section 14. Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Area or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association. The expenditure of such funds shall be limited to the repair and replacement of those elements of the Common Area which must be repaired or replaced according to a reserve study as permitted by Section 1365.5 of the California Civil Code, as same may be amended from time to time.

Section 15. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Area or abandonment of his Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

Section 16. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

(a) All property dedicated to and accepted by any public authority;

(b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, no land or Improvements devoted to dwelling use shall be exempt from said Assessment; and

(c) All Common Area owned in fee by the Association.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 1. Effect of Nonpayment of Assessments: Remedies of the Association. Any installment of a Regular, Special, Special Benefit, or Compliance Assessment not paid within fifteen (15) days after it is due and payable, shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%), commencing thirty (30) days after the Assessment was due. The Association need not accept any tender of a partial payment of an assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Association's right to demand and receive full payments thereafter. Payments for Assessments shall first be applied to the principal owed for the Assessments and only after such principal amount is paid in full, shall such payments be applied to interest or collection expenses for such Assessments. If requested by an Owner, the Association shall provide the Owner with a receipt of payment of Assessments, indicating the date of the Owner's payment of Assessments and the person who received such payment on behalf of the Association. The Association shall establish a mailing address for the overnight payment of Assessments. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular, Special or Special Benefit Assessment, may foreclose the lien against his Lot. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such Delinquent Assessments. To the extent permitted by law, each Owner waives, with respect to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment thereof becomes delinquent or any lien is imposed.

Section 2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments, or to proceed under the power of sale herein, unless (1) the Association notifies the Owner in writing by certified mail of all matters required by California Civil Code Section 1367.1(a), as the same may be amended from time to time (e.g., a general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that

the Owner has the right to inspect the Association records pursuant to Corporations Code Section 8333, a warning in 14-point boldface type that if the Owner's Lot is placed in foreclosure because he/she is behind in the payment of Assessments, the Lot may be sold without court action, an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal amount of delinquent Assessments owed, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, a statement that the Owner shall not be liable to pay the charges, interest, and costs of collection if it is determined the Assessments were paid on time to the Association, and the right to request a meeting with the Board of the Association concerning said notice, as provided in California Civil Code Section 1367.1(c), as the same may be amended from time to time; and (2) at least thirty (30) days following the delivery of the notice referenced above, a "Notice of Delinquent Assessments" is prepared and deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy of the Notice is recorded by the Association in the Office of the County Recorder, pursuant to California Civil Code Section 1367.1, as the same may be amended from time to time. Said Notice of Delinquent Assessments must recite or include the name and street address of the record Owner, a good and sufficient legal description of any such Lot, an itemized statement of the amount claimed due and payable (including any reasonable late charges as may, from time to time, be established by the Board in accordance with California law [and the method of calculation], interest on the unpaid Assessment, plus reasonable attorneys' fees and expenses of collection incurred in connection with the debt secured by said lien), and the name and address of the principal office of the Association, and, in the event of a nonjudicial foreclosure, as provided in Section 3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by the President, or Vice President, and the Secretary, or assistant Secretary, of the Association and mailed in the manner set forth in California Civil Code Section 2924(b), to all record Owners of the Owner's interest in the Project no later than ten (10) calendar days after recordation. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b and 2924c of the California Civil Code, as same may be amended, from time to time, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Any Owner, by acceptance of a deed for his Lot, hereby expressly waives any objection to the enforcement and foreclosure of the lien in this manner.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Association, the officers thereof are hereby authorized to file or record, as the case may be, an appropriate release of such Notice upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

Section 6. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder, nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded Mortgage or deed of trust upon a Lot made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE VIII

USE RESTRICTIONS

The Lots and Common Area shall be occupied and used only as set forth below.

Section 1. Private Residential Dwelling. Each Lot shall be used as a private residential dwelling and for no other purpose, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves the right, for a period of five (5) years from recordation of this Declaration, or until all Lots in Tract No. 16323 and the Annexation Property are sold (and escrows closed), whichever shall first occur, to carry on normal sales activity on the Project, including the operation of models and sales offices, provided Declarant shall not unreasonably interfere with any other Owner's use of the Common Area.

Section 2. Common Area Use. Use of the Common Area shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association.

Section 3. Conduct Affecting Insurance. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Common Area shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 4. Liability for Damage. Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Area which be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. After approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner's Lot.

Section 5. Signs. Subject to the provisions of California Civil Code, Sections 712, 713, 1353.5 and 1353.6, and California Government Code Section 434.5, as same may be amended from time to time, no sign of any kind shall be displayed to the public view on or from any Lot or the Common Area without the approval of the Association, except such signs as may be used by Declarant for a period of five (5) years from recordation of this Declaration or until all Lots in Tract No. 16323 and the Annexation Property are sold (and escrows closed), whichever is first to occur, in connection with the development of the Project and sale of Lots, and except one (1) "for sale," "for lease" or "for exchange" sign of reasonable size (but not exceeding six [6] square feet) on any Lot. The foregoing restrictions shall not apply to any sign of customary and reasonable dimensions displayed on the Owner's Lot (or another Owner's Lot with consent) which states that the Residence is for sale, lease or exchange, or advertising directions to the Residence by the Owner or his or her agent, and which is reasonably located in plain view of the public, so long as it is consistent with any standards promulgated by the Architectural Review Committee. All signs permitted under this Section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations.

Section 6. Maintenance of Animals. No animals of any kind shall be raised, bred or kept in any Lot or in the Common Area, except that common domesticated dogs, cats, birds or other household pets (other than small household pets such as fish), may be kept in each Lot in reasonable numbers; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose and shall not exceed any weight limitations, if any, established by the Board. As used in this Declaration, "reasonable

numbers" shall ordinarily mean more than two (2) total pets (excluding small household pets such as fish) per Lot; however, the Board may determine that a reasonable number in any instance may be more or less than two (2). Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. While walking or exercising an animal in the Project, the owner thereof shall, at all times, have readily available means to cleanup any excrement or other unclean or unsanitary conditions caused by said animal. The Association, upon the approval of two-thirds (2/3) of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal. All pets belonging to Owners, tenants, lessees or guests must be kept within an enclosed area or on a leash being held by a person capable of controlling the animal.

Section 7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Notwithstanding the foregoing, for as long as Declarant owns an interest in the Project, the Declarant's efforts in selling the Lots may interfere with the Owners' quiet enjoyment of the Lots, however, each Owner acknowledges this and waives any claims against the Declarant for nuisance due to any activity related to constructing, selling or marketing the Lots. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from his Lot. All clotheslines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited from any Lot unless obscured from view by a fence or appropriate screen approved by the Architectural Review Committee provided for hereinbelow.

Section 8. Structural Changes. There shall be no structural alteration, construction or removal of any Residence, fence, wall, or other structure whatsoever in the Project without the prior written approval of the Board or its designated Architectural Review Committee (including any necessary City approval), as required herein, except such works of construction by Declarant during the development of the Project.

Section 9. Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Common Area") without the approval of the Architectural Review Committee, as set forth

hereinbelow, and, if necessary, the City. No Improvement shall be constructed upon any portion of any Common Area, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer), or (b) by the Association as provided herein. No fence or wall may be erected, altered or maintained on any Lot except with the Architectural Review Committee's prior approval. No projections of any type may be placed or permitted to remain above the roof of any Residence within the Project, except one (1) or more chimneys and vent stacks originally installed, if at all, by Declarant. No basketball backboard or other fixed sports apparatus may be constructed or maintained in the Project without the Architectural Review Committee's prior written approval. No patio cover, wiring or air conditioning fixture, water softeners or other devices may be installed on the exterior of the Residence, on a Lot, or be allowed to protrude through the walls or roof of the Residence (with the exception of those items installed during the original construction of the Residence by Declarant) unless the Architectural Review Committee's prior written approval is obtained.

Section 10. Post Tension Slabs. Each Owner hereby acknowledges that the concrete slab for Owner's Residence may be reinforced with a grid of steel cables which would be installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Each Owner further acknowledges cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence and/or personal injury. By accepting a grant deed to the Lot, and subject to confirmation by the Owner that his/her Residence was constructed with a post tension slab, each such Owner hereby specifically covenants and agrees that:

(a) He/she shall not cut into or otherwise tamper with the Post Tension Slab;

(b) He/she shall not knowingly permit any other person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Lot;

(c) He/she shall disclose the existence of the Post Tension Slab to any tenant, lessee, or grantee of the Residence; and

(d) He/she shall indemnify and hold Declarant, and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorneys' fees) arising from any breach of this Section.

Section 11. Windows. No window in any Residence shall be covered in whole or in part, inside or outside, with aluminum

foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Association.

Section 12. Commercial Activity. No business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Lot or the Common Area, except such temporary uses as shall be permitted by Declarant. Notwithstanding the foregoing, this Section shall not preclude an Owner from maintaining a home-office and conducting business activities therefrom on the following conditions: (a) there is no external evidence of such activity; (b) such activities are conducted in conformance with all applicable government laws (e.g., all necessary permits and/or licenses are obtained); (c) the patrons or clientele of such activities do not visit the Residence or park automobiles or other vehicles within the Project; (d) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Residence or Lot; (e) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (f) such activities are consistent with the residential character of the Project and conform with the provisions of this Declaration. Until such time as Declarant no longer has an ownership interest in Tract 16323, no Owner or the Association shall use a Residence as an office for the rental, resale or leasing of Lots without the prior written consent of Declarant.

Section 13. Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) Restrictions Regarding the Public Streets. All streets within the Project are public and are subject to all applicable laws, ordinances and regulations of the City and other governmental agencies having jurisdiction over the public streets.

(b) No Parking on Portions of Public Streets. As required by the City, no on-street parking is permitted on the public street within the Project labeled as street G on the tentative map for Tract No. 16323 (i.e., Glen Summer Drive). Parking is only permitted on one side of the public streets within the Project labeled as streets D, E, F, and on the one-way portion of the public street within the Project labeled as street C on the tentative map for Tract No. 16323. (Depictions of the "no parking" areas on the public streets affecting Phase 1 of the Project are attached as Exhibit "D" hereto and incorporated by reference). The City shall have the right to enforce this provision through any means available either at law, or in equity, including, but not limited to, the power to tow violators away, and to assess towing charges to the Owner/violator.

(c) No Parking on Common Area. No parking is permitted on any portion of the Common Area. The Board shall

have the right to enforce this provision through any means available either at law, or in equity, including, but not limited to, the power to tow violators away, and to assess towing charges to the Owner/violator as special assessments.

(d) Vehicles. Except as otherwise set forth in the Association's Rules and Regulations, no Owner shall park, store or keep any non-motorized vehicles, trailers regardless of length, or motorized vehicles that exceed seven (7) feet in height, seven (7) feet in width, or twenty (20) feet in length, including, but not limited to, any large commercial type vehicle or any recreational vehicle (e.g., campers, motorhomes, trailers, boat trailers, boats, aircraft, mobile homes or other similar vehicles) in any parking or driveway area, except for purposes of loading, unloading, making deliveries or emergency repairs.

(e) Repairs. No Owner shall conduct major repairs to any motor vehicle of any kind whatsoever in his garage or upon the Common Area, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility. No Owner shall park or store an inoperative vehicle on his or her Lot, other than in the garage, or in the Project for more than forty-eight (48) hours.

(f) Storage of Goods in Garages. As required by the City, all vehicles used by the residents of a Lot shall be parked within the garage. No Owner shall store any goods or materials in his garage, nor use any portion of the garage for a workshop or other use, if such storage or use would prevent said Owner from parking the number of vehicles therein for which said garage was originally designed and constructed by Declarant (e.g., 2).

(g) Garage Doors. Each Owner shall ensure that his garage door opener is in proper working order at all times.

(h) Transfer of Interest. No Owner may lease, sublease, sell or give any parking space(s) within his garage to any individual who is not a resident within the Project.

Section 14. Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish "parking" and "no parking" areas within the Common Area, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. Parking is limited in accordance with signs installed by Declarant or authorized by the City. The Board shall have the authority to tow away and store any vehicle or similar equipment

parked in violation of the above limitations whether the same shall belong to any Owner or a member of his/her family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Residence which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment. Prior to any change to the parking regulation applicable to the project, the Board shall obtain approval from the City. Each Owner who accepts a deed to a Lot within the Project shall be deemed to acknowledge that the City is a third party beneficiary of the parking restrictions and regulations established by this Declaration and that the City has the power to enforce the same.

Section 15. Compliance With Management Documents. All Owners shall be Members of the Association and shall comply with the terms and conditions as set forth herein and in the Articles and the By-Laws, and all Rules and Regulations of the Association and Architectural Review Committee. No Owner shall transfer any membership or interest in the Association, except upon the transfer of the Lot to which it is appurtenant.

Section 16. Declarant's Improvements. Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant to complete construction of any Improvements to the Common Area and/or to any Lot owned by Declarant, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable prior to completion and sale of the entire Project. The rights of Declarant under this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor.

Section 17. Solar Heating. No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Lot or Common Area, or any Improvement thereon, unless such equipment is installed in such location and in such manner as to be obscured from the view of other persons in the Project to the greatest degree practicable without significantly decreasing its efficiency. No person shall install any such panels or equipment without the prior written consent of the City, if necessary, and the Architectural Review Committee, which shall have the right to reasonably restrict and determine the size, shape, color, style, materials or location of any such panels or equipment within the Project, subject to the provisions of California Civil Code Section 714, as same may be amended, from time to time. At a minimum, any solar panels are to be integrated with the roof design with the panels and frame colored to match the roof or bronze anodized.

Section 18. Antennas. No radio station or shortwave operators of any kind shall operate from any location in the Project. Except as otherwise provided by law, no Owner shall

install, or cause to be installed, or maintain any television, radio, "Citizens Band" (C.B.) antenna, satellite dish or other similar electronic receiving or broadcasting device (including those devices having a diameter or diagonal measurement of one meter or less) in the Project in such a manner as to be visible from the Common Area, unless (1) approved by the Architectural Review Committee (which approval for a video or television antenna, including a satellite dish, shall not be unreasonably withheld or delayed but may include restrictions which do not significantly increase the cost of the installation, maintenance or use of the device or significantly decrease its efficiency or performance or preclude reception of an acceptable quality signal) and (2) in compliance with all applicable ordinances of the City, California Statutes (including, but not limited to, Civil Code Section 1376), and Federal Regulations, as each may be amended or revised.

Section 19. Leasing. No Owner shall be permitted to rent or lease his Lot for transient or hotel purposes or for a period of less than thirty (30) days. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws and Articles, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement.

Section 20. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted in the Project, nor shall oil wells, tanks, tunnels or mineral excavations be permitted in the Project. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted in the Project.

Section 21. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of the Project, except in covered sanitary containers approved by the City located in garages, or appropriate paved areas screened and concealed from view by a fence, wall or other screen approved by the Architectural Review Committee, or in such portions of the Project, if any, improved with trash receptacles provided for the use of all Owners, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. All such refuse which is put out for pickup, shall be in conformance with all appropriate standards established by the City or governing agency. In the event trash is collected from each individual Lot, appropriate sanitary containers may be exposed to the view of neighboring Residences only when set out on the sidewalks or streets no earlier than 5:00 p.m. the night prior to the trash pick-up day and removed from the sidewalk or street within ten (10) hours after pickup, unless otherwise modified by the Board.

Section 22. Drainage. There shall be no interference with the established drainage pattern over any Lot within the Project as to affect any other Lot or the Common Area, unless adequate alternative provision is made for proper drainage and is approved in writing by the Architectural Review Committee. For purposes hereof, "established" drainage is defined as the drainage which exists at the time such Lot is conveyed to a purchaser from Declarant, or later grading changes or architectural plans that are shown on plans approved by the Architectural Review Committee. Each Owner further agrees not to obstruct, retard or otherwise interfere with, in any manner whatsoever, any drainage swales, or to perform any grading or construction on his Lot which may result in creating an excessive amount of surface water runoff (i.e., an amount of water beyond the flow originally intended and provided for by the approved grading plan) to flow into said drainage swales. Except as may be otherwise maintained by the Association (if at all), each Owner of a Lot shall, at his sole cost and expense, maintain that portion of any drainage swale or other drainage devices located on his respective Lot.

Section 23. Prohibition Against Further Subdivision. No Owner shall make any conveyance, execute any document or map, or enter into any contract which shall purport to further subdivide any Lot in any manner whatsoever, including, without limitation, subdividing such Lot into additional lots, condominiums, stock cooperatives or timeshare uses, whether by map, deed or contract. Any such conveyance, document, map or contract shall be void and of no force or effect whatsoever.

Section 24. Patios and Balconies. Patios and balconies, and all furniture, plants and other improvements situated therein, shall be kept at all times in a neat, clean, safe and attractive condition. Clothes, towels, blankets, laundry, or clotheslines shall not be placed on or hung from any patio or balcony, or any portion of the Common Area, where doing so would be visible from any other Lot, the Common Area or the public. Patios and balconies shall not be used for storage of any items deemed inappropriate by the Architectural Review Committee.

Section 25. Exemption of Declarant. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing of the Lots in the Project, including the Annexation Property, until the earlier of (1) when Declarant no longer owns an interest in Tract 16323, or (2) five years from the recordation of this Declaration:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s), and construction trailer(s), construction parking areas, temporary utility facilities and/or lines, and parking area for employees located upon any Lot(s) owned by Declarant or upon any Common Area without payment of rent or approval of the Association;

(b) The right to post and display from any Lot(s) owned or controlled by Declarant or from any Common Area any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items, except to the extent that the exercise of said right conflicts with any provisions of the City's Municipal Code or other applicable governmental regulations;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned or controlled by Declarant, from any Common Area, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement from any Common Area without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Lot owned or controlled by Declarant or upon any Common Area which reasonably relates to the development, marketing, leasing or sales of the Lots in the Project; and

(e) The right to park vehicles upon any Lot owned or controlled by Declarant or upon any Common Area.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project, including the Annexation Property, by an express written assignment recorded in the Office of the County Recorder.

Section 26. No Easements for View Purposes; Disclaimer. The Article herein entitled "Architectural Review - Approval," sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the architectural standards adopted, from time to time, pursuant to said Article. The architectural standards may have some effect on views and the passage of light and air to individual Lots. However, by promulgation and enforcement of the architectural standards, or otherwise, neither Declarant, the Board nor the Architectural Review Committee, or the members, employees or consultants of any of the foregoing, have made any representa-

tions whatsoever concerning the view, if any, that a particular Lot or other Improvement thereon will enjoy. There are no express or implied easements or rights whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that further construction within the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment. The City makes no claim, warranty, or guarantee that views from any Lot will be preserved as development of surrounding properties occurs.

Section 27. Public Right-of-Way. No Owner shall construct any Improvement in the public right-of-way or public utility easement adjacent to or within the Project, if applicable, unless the Owner obtains all necessary permits from the City, public utility company, and approval from the Board, as necessary.

Section 28. Hazardous or Toxic Waste. Nothing other than natural rain water may be discharged into the storm drains and storm drainage system located on private or public property. The National Pollutant Discharge Elimination System (NPDES) and Section 5650 of the California Fish and Game Code prohibit, among other things, discharging anything other than natural rain water into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County and City requirements as prescribed on their respective containers. The Association and all Owners within the Project are required to comply with such restrictions. Owners shall wash vehicles within the Project only if allowed by law and then, if applicable, only in accordance with the requisite requirements.

Section 29. Automatic Fire Sprinklers. As required by the City, each Residence shall be equipped with a fully automatic fire sprinkler system meeting the requirements of the National Fire Protection Association (NFPA) 13. In addition, the fire sprinkler system shall provide sprinkler coverage in garages, attached porches, additional small rooms and concealed spaces. No Owner or other resident of the Project shall alter, modify, disable or take any other action which might impair the automatic fire sprinkler system.

Section 30. Sideyard Easements. As mapped, certain Lots within the Project will be "zero lot line" Lots (e.g., see Exhibit "E" attached hereto). To accommodate this system of ownership, the Declarant reserves and establishes various easements for sideyard, front yard and related purposes as set forth herein. The rights and obligations of the Owners of the Lots are as set forth herein, and each such Owner acknowledges and agrees that he

has a vested interest in the establishment and preservation of said system of ownership.

(a) Definitions. The following definitions shall be applicable to the Lots located within the Project:

(1) "Adjoining Lot" shall mean and refer to each Lot which has a Zero Lot Line Wall constructed thereon, and which is burdened by permanent easements appurtenant to the adjoining Dominant Lot for sideyard and rear yard purposes (i.e., the servient tenement).

(2) "Dominant Lot" shall mean those Lots which have permanent easements appurtenant thereto over the Adjoining Lot for sideyard and rear yard purposes as set forth herein.

(3) "Dominant Owner" shall mean and refer to any Owner whose Lot is benefitted by permanent easements appurtenant thereto over an Adjoining Lot.

(4) "Adjoining Owner" shall mean and refer to any Owner whose Lot is burdened by permanent easements appurtenant to an adjoining Dominant Lot.

(5) "Zero Lot Line Walls" shall mean the particular structural wall of a Residence which contains no first floor windows or doors (i.e., within four feet above the finished floor), and which is constructed substantially parallel to the Lot line, such that one (1) side of said Wall is the interior of the Residence located on the Adjoining Lot and the other side of the Wall serves as part of the boundary between the Dominant Lot and Adjoining Lot.

(6) "Fences" shall refer collectively to the types of fences and walls more particularly described below:

i) "Front Yard Fences" shall mean and refer to any fence or wall (other than a wall which constitutes all or a portion of a Residence) which: (A) generally parallels the street in front of any Residence and extends between two (2) Residences on adjoining Lots, or (B) extends parallel to the Lot line within the Front Yard Easement Area, and/or (C) borders the street along a corner Lot.

ii) "Rear Fences" shall mean and refer to any fence or wall (other than a fence or wall which constitutes all or a portion of a Residence) which: (A) is located approximately on the rear property line of a Lot; (B) is located generally

parallel to the side property line between two Lots and serves as the effective boundary between the rear yard on adjacent Lots; and (C) which generally parallels a street on a corner Lot or a side property line paralleling the street.

Notwithstanding the foregoing, if any such Front Yard and/or Rear Fence is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), the Association shall repair and/or rebuild said Front Yard or Rear Fence; however, said Owner shall bear all of the costs thereof. If any such Rear Fence is damaged or destroyed by any other cause, the Association shall repair and/or rebuild same and pay the cost thereof.

(7) "Sideyard Easement Areas" shall mean those areas designated on Exhibit "E" attached hereto.

(8) "Front Yard Easement Areas" shall mean and refer to those portions of the Lots depicted and/or described on Exhibit "A" attached hereto (i.e., which comprise portions of the "Common Areas Maintained By Association" depicted thereon).

(b) Establishment of Zero Lot Line Easements. In order to create and establish a zero lot line system of ownership within the Project, Declarant hereby creates, establishes and reserves permanent easements appurtenant to certain Dominant Lots on, over and across those certain portions of their respective adjacent Adjoining Lots, which are generally depicted and described on Exhibit "E." Said easements shall be used for general recreation, gardening, landscaping, access, maintenance and other purposes provided herein, and shall be subject to each and all of the covenants set forth in this Declaration. Declarant further reserves for Adjoining Owners easements over portions of the Side Yard Easement Areas to accommodate encroachments for any foundations, footings, eaves, overhangs, chimneys or other similar Improvements originally constructed by Declarant.

(c) Ownership of Zero Lot Line Walls. Ownership of each Zero Lot Line Wall shall be vested in the Owner of the Adjoining Lot upon which the Zero Lot Line Wall is located. Notwithstanding said vesting of ownership, all Zero Lot Line Walls constitute party walls, and the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of Zero Lot Line Walls shall be as set forth herein.

(d) Maintenance of Zero Lot Line Walls. Except as otherwise maintained by the Association, the Adjoining Lot

Owner shall paint, maintain, and repair the Zero Lot Line Wall, including that portion which faces the Dominant Owner's Lot, in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. Notwithstanding the foregoing, in the event any painting, maintenance or repair is required due to the fault of the Dominant Owner, the Dominant Owner shall promptly cause said work to be performed and shall bear all costs thereof. The Dominant Owner shall not paint or drive nails, screws, bolts or other objects into the Zero Lot Line Wall, or permit or suffer anything else to be done to such Wall which would tend to damage, alter or impair the structural integrity of such Wall. Further, Dominant Owner shall not, under any circumstances, plant any tree, shrub or other landscaping, or build, erect or otherwise install any Improvement of any kind within two feet (2') of the Zero Lot Line Wall which would unreasonably impede or interfere with the necessary maintenance and repairs to the Zero Lot Line Wall by the Adjoining Lot Owner, and impair the structural integrity of such Wall or unreasonably interfere with the utility easements referenced hereinbelow.

(e) Use and Maintenance of Sideyard Easement Areas. Each Dominant Owner shall have the right and responsibility to landscape and otherwise maintain the Sideyard Easement Area appurtenant to his Lot in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. The Sideyard Easement Area shall be used only as a general recreation and garden area by the Owner of the Dominant Lot approved by the Board. Such purpose shall include the right of each such Owner to landscape, hardscape and establish an irrigation system thereon, provided such landscaping, hardscape and irrigation system shall be first approved by the Architectural Review Committee. Additionally, said Owner shall not plant any tree, shrub or other landscaping upon the Sideyard Easement Area which would: (1) impair or otherwise threaten the structural integrity of any adjacent Residence; or (2) interfere with the Adjoining Owner's right of access, as set forth herein. Neither the Dominant Owner nor the Adjoining Owner shall construct, install or erect any Improvement in the Sideyard Easement Area, except as expressly permitted by the Architectural Review Committee and approved by the City as necessary.

(f) Adjoining Owner's Access Rights. The Owner of the Adjoining Lot shall have an easement for ingress, egress and access on, over and across the Sideyard Easement Area and Front Yard Easement Area and the Dominant Lot as may be reasonably necessary to allow the Owner of the Adjoining Lot to paint, maintain and repair the Zero Lot Line Wall, his Residence, including any gutter or downspout attached thereto and driveway. Except in the case of a bona fide emergency, the Owner of the Adjoining Lot shall give the Owner of the Dominant Lot at least twenty-four (24) hours prior written

notice of his intention to enter upon the Dominant Lot and the Sideyard Easement Area, and shall perform all necessary work during reasonable daylight hours. In the event of an emergency, such entry may be made at any time and without notice. Under all circumstances, the Owner of the Adjoining Lot shall use his best efforts to minimize the duration of the work and the inconvenience to the Owner of the Dominant Lot.

(g) Ownership of Walls. Ownership of each Front Yard Fence and Rear Fence, or portion thereof, shall be vested in the Owner of the Lot upon which said Fence, or portion thereof, is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Fences shall be as set forth herein.

(h) Maintenance of the Fences. The rights and responsibilities of the Owners with respect to the maintenance and repair of Fences shall be as follows:

(1) Front Yard Fences. As a result of the Zero Lot Line system of ownership, each Front Yard Fence is of primary benefit to the Owners within the Project. Accordingly, the Association shall perform all structural repairs to the Front Yard Fences depicted on Exhibit "C" which were originally installed by Declarant (except any latches, hinges, or locks associated therewith), and paint and maintain that side of said fences which face Common Area. The Association shall keep the Front Yard Fences in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof as set forth herein. No Owner may construct, erect, raise, remove, paint or otherwise alter any Front Yard Fence without the prior express written consent of the Board. Said fences will generally be located on portion of one or more Lots, therefore, each Owner of a Adjoining Lot shall only remain secondarily liable for the maintenance of any interior surface of a Front Yard Fence, or portion thereof, located upon such Owner's Lot for which the Owner of an adjacent Dominant Lot is primarily responsible, pursuant to this paragraph. In the event it becomes necessary for the Owner of a Adjoining Lot to perform any maintenance for which he is only secondarily liable, said Owner shall have all necessary access rights over the Sideyard Easement Area, Front Yard Easement Area and Dominant Lot to perform such maintenance and shall have a right of indemnification for all costs incurred in the performance of such maintenance from the Owner who is primarily liable.

(2) Rear Fences. As a result of the Zero Lot Line system of ownership, each Rear Fence is of primary benefit to the Owners within the Project. Accordingly,

each the Association shall perform all structural repairs to the Rear Fences depicted on Exhibit "C" which were originally installed by Declarant (except any latches, hinges, or locks associated therewith), and paint and maintain that side of said fences which face Common Area. The Association shall keep the Rear Fences in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof as set forth herein. No Owner may construct, erect, raise, remove, paint or otherwise alter any Rear Fence without the prior express written consent of the Board. Said fences will generally be located on portion of one or more Lots, therefore, each Owner of a Adjoining Lot shall only remain secondarily liable for the maintenance of any interior surface of a Rear Fence, or portion thereof, located upon such Owner's Lot for which the Owner of an adjacent Dominant Lot is primarily responsible, pursuant to this paragraph. In the event it becomes necessary for the Owner of a Adjoining Lot to perform any maintenance for which he is only secondarily liable, said Owner shall have all necessary access rights over the Sideyard Easement Area, Front Yard Easement Area and Dominant Lot to perform such maintenance and shall have a right of indemnification for all costs incurred in the performance of such maintenance from the Owner who is primarily liable.

(i) Alterations. No alterations, repairs or restoration to any Zero Lot Line Wall, Front Yard Fence or Rear Fence shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been approved, in writing, by the Architectural Review Committee. Except for the Fences originally constructed by Declarant, no wall, fence or other structure of any kind shall be constructed on any Lot without the prior written approval of the Architectural Review Committee.

(j) Easements for Installation of Utility Lines. In the event the Owner of a Adjoining Lot desires to construct any Improvements in his rear yard or sideyard and has obtained the required approvals in accordance with the provisions of this Declaration and the City, and if such Improvements require utility service (e.g., electricity to operate a spa pump), an easement is hereby reserved in favor of and appurtenant to the Adjoining Lot on, over and across the Sideyard Easement Area burdening his Lot for the installation, maintenance and repair of all utility lines and connections which are reasonably necessary for the use and enjoyment of such Improvements. The Owner of the Adjoining Lot shall give the Owner of the Dominant Lot at least twenty-four (24) hours notice prior to commencing any work in the Sideyard Easement Area, and shall use his best efforts to minimize the duration

of the work and inconvenience to the Owner of the Dominant Lot. The Owner of the Adjoining Lot shall, at his sole cost and expense, restore any landscaping or irrigation equipment removed or otherwise damaged by reason of such work to substantially the same condition as existed prior to the commencement of such work.

(k) Drainage Easements. The Declarant hereby establishes and reserves nonexclusive reciprocal easements over the Sideyard Easement Areas and Front Yard Easement Areas for drainage purposes to accommodate the drainage system, including, but not limited to area drains and pipes, originally installed by Declarant pursuant to the grading and construction plans approved by the City. The Dominant Owners and Adjoining Owners served by said drainage system shall be mutually responsible to maintain and preserve said system in operating condition to ensure proper drainage on, over and across the Sideyard Easement Area and Front Yard Easement Area in accordance with the established drainage patterns created by the approved drainage system and/or grading plans for each Lot and shall share equally in the maintenance, repair or replacement costs associated with such drainage system. No Owner shall alter or remove the drainage system without the express written consent of the adjoining Lot Owner served by such drainage system and the Architectural Review Committee. In the event any portion of the drainage system is damaged or destroyed, either Lot Owner may cause said repair or restoration work to be completed and shall be entitled to recover the appropriate expenses from the adjoining Lot Owner. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall repair and/or rebuild such drainage system, and shall bear all of the costs thereof.

(l) Indemnification by Dominant Owners. Each Dominant Owner shall indemnify and save the respective Adjoining Owner harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Dominant Owner relating to the exercise of its rights or the performance of its obligations hereunder.

(m) Indemnification by Adjoining Owners. Each Adjoining Owner shall indemnify and save the respective Dominant Owner harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Adjoining Owner relating to the exercise of its rights or the performance of its obligations hereunder.

(n) Right of Contribution. The right of any Owner to contribution from any other Owner for work performed pursuant to this Article shall be appurtenant to and shall run

with the land, and shall be binding upon the Owners and their successors, assigns and grantees. Notwithstanding the foregoing, the duty and obligation to pay contribution for work already performed, pursuant to the provisions of this Section, shall not run with the land or be binding upon: (a) any first mortgagee who obtains title pursuant to either a foreclosure under its deed of trust or by a deed in lieu of foreclosure, or (b) any purchaser at a foreclosure sale under such deed of trust.

Section 31. Illuminated Addresses. Address numbers on all Residences shall be illuminated as required by the City.

Section 32. No Warranty of Enforceability. While Declarant has no reason to believe that any of the Protective Covenants contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such Protective Covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such Protective Covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE IX

ARCHITECTURAL REVIEW - APPROVAL

Section 1. Exemptions From Architectural Review. Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant in accordance with the plans approved by the City; provided, however, if Declarant shall desire to construct any Improvements to the exterior of a Residence after such Residence has been completed and approved by the City, Declarant shall obtain approval for such Improvements from the City; and, provided further, if Declarant shall retain a Residence for personal use, any Improvements to the exterior of such Residence shall be subject to architectural approval pursuant to this Article. The provisions of this Article may not be amended without the express written consent of Declarant so long as Declarant is offering any Lots for sale or lease, or so long as Declarant owns any portion of the Annexation Property and such property may be annexed into the Project in accordance with the Article herein entitled "Annexation of Additional Property."

Section 2. Architectural Review. Except for the purposes of proper maintenance and repair, and except as may otherwise be permitted hereunder, no person shall install any Improvement, including, without limitation, solar heating panels, lighting, shades, screens, awnings, patio covers, sunshades, trellises, gazebos, roof additions, mechanical equipment, decorations, fences,

screen doors, aerials, antennas, radio or television broadcasting or receiving devices, air conditioning units, or change or otherwise alter the exterior of any Residence or appurtenant Improvement unless same is approved by the Architectural Review Committee. For the purposes of this Section, the term "exterior" shall mean any outside wall, outside surface, roof, outside door, patio, balcony, deck, garage or other outside structure of said Residence which is visible to others in the Project and/or to the public.

Section 3. Architectural Review Committee. The Architectural Review Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of not less than three (3) members, nor more than five (5) members. In the event of the failure or inability of any member of the Architectural Review Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Review Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Review Committee until the fifth (5th) anniversary of the first Close of Escrow for the sale of a Lot pursuant to a final subdivision public report issued by the DRE for the project. After one (1) year from the date of such first Close of Escrow, the Board shall have the power to appoint one (1) member to the Architectural Review Committee until ninety percent (90%) of the Lots in the Project have been sold, or until the fifth anniversary date of the first Close of Escrow for the sale of a Lot pursuant to a Final Subdivision Public Report for the first Phase of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Review Committee. All members appointed to the Architectural Review Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Review Committee by the Declarant, however, need not be members of the Association. No member of the Architectural Review Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Review Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Review Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

Section 4. Meetings of the Architectural Review Committee. The Architectural Review Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Review Committee may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder (except the right to approve any Improvement or architectural submittal required by this Declaration) to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Review Committee on all matters so delegated.

Section 5. Architectural Standards/Guidelines. The Board (or Architectural Review Committee if authorized by a majority of the Board) may, from time to time, adopt architectural standards/guidelines to be administered through the Architectural Review Committee for use by said Committee in reviewing plans and specifications for proposed Improvements to an Owner's Lot. The architectural standards/guidelines may include, without limitation, those guidelines, procedures, limitations and restrictions upon Owners set forth below:

(a) The placement, reconstruction, addition, change or alteration of any Improvement on a Lot or the exterior of a Residence, including the nature, kind, shape, materials, exterior color, location, and height of any Improvement, including landscaping;

(b) A description of the type of such construction, additions, changes or alterations which, if completed in conformity with the architectural standards, do not require approval of the Architectural Review Committee;

(c) Conformity of completed Improvements to plans and specifications approved by the Architectural Review Committee;

(d) Time limitations for the completion of the Improvements for which approval is required pursuant to the architectural standards;

(e) Procedures for submission of plans and specifications submitted for Architectural Review Committee review, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and a description or samples of exterior colors and materials;

(f) Restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Project (i.e., approved landscape palettes);

(g) Restrictions controlling the placement of any trees, plants, shrubbery, ground cover, etc., to be placed planted, irrigated and maintained in the Project (including requirements regarding the use of root barriers and/or other similar devices to prevent damage to Residences, hardscape and other Improvements); and

(h) A reasonable schedule of fees for submission of plans and specifications or bonds (or cash deposits) to ensure proper completion and clean up of the anticipated work and compliance with the approved plans.

The architectural standards may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The Architectural Review Committee shall maintain a copy of the then current architectural standards on file at all times, and shall provide each Owner with a copy of the architectural standards upon written request. The Board shall establish a reasonable fee for copies of the architectural standards, and other related materials, to cover costs of reproduction, administration and handling.

Section 6. Architectural Approval - Review of Plans and Specifications. The Architectural Review Committee shall comply with the Architectural guidelines/standards adopted by the Board (including any supplementary Rules and Regulations thereto adopted by the Board) to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the buildings in the Project. The Architectural Review Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Review Committee. No construction, alteration, grading, addition, excavation, demolition, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Review Committee and approved in writing by the Architectural Review Committee. The address for submission of such plans and specifications, shall be provided to the Owners by the Board.

The Architectural Review Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area, or the enjoyment thereof by the Owners; (d) the upkeep and maintenance thereof will not become a burden on the Association; and (e) the plans and specifications substantially comply with the Architectural standards/guidelines. The Architectural Review Committee may condition its approval of proposals or plans and specifications for any Improvement: (i) on such changes therein as it deems appropriate, (ii) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (iii) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require

submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Review Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions which are consistent with the Architectural standards/guidelines.

The Architectural Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

No approval by the Board of the Architectural Review Committee of any proposed plans and specifications shall be deemed to constitute a warranty or representation of any kind that such plans and specifications will be approved by the City of Loma Linda or other governmental entity or agency having jurisdiction over the Improvement. If the Board approves any plans and specifications for an Improvement and the City or other governmental entity or agency subsequently requires any significant changes or revisions to such plans and specifications, the Owner must resubmit the revised plans and specifications to the Architectural Review Committee in accordance with the terms of this Section for review and approval.

Section 7. Decisions of the Architectural Review Committee. Until receipt by the Architectural Review Committee of any required plans and specifications, and such other information as may be required in Section 6 above, the Architectural Review Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Review Committee and the reasons therefor should be transmitted by the Architectural Review Committee to the applicant, at the address set forth in the application for approval, within sixty (60) days after receipt by the Architectural Review Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 6 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Review Committee shall have been transmitted to the applicant within sixty (60) days after the receipt by the Architectural Review Committee of all required materials.

Section 8. Submittal to City - Right of Architectural Review Committee to Review. Upon obtaining the written approval of the Architectural Review Committee, the Owner shall thereafter submit plans and specifications to the City. In the event that all necessary approvals of the City for the issuance of a building

permit or other permits required to commence the work contemplated in the plans and specifications are not obtained within six (6) months from the date of approval by the Architectural Review Committee, the Architectural Review Committee shall have the right, but not the obligation, to re-review all previously approved plans and specifications. In addition, in the event that the City requires modifications to the plans and specifications previously approved by the Architectural Review Committee, the Owner shall submit to the Architectural Review Committee all modifications to the plans and specifications previously approved by the Architectural Review Committee. In the event the Owner is obligated to resubmit plans and specifications to the Architectural Review Committee to reflect the modifications required by the City, said Committee shall have the right to review and to impose further conditions on any such modifications.

Section 9. Approval of City. Approval of any proposed or existing Improvement, or completion of an Improvement, by the Architectural Review Committee or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Review Committee or the Board.

Section 10. Conflicts Between City and Architectural Review Committee. In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the City and the Architectural Review Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Review Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the City.

Section 11. No Waiver of Future Approvals. The approval of the Architectural Review Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 12. Compensation of Members. The members of the Architectural Review Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred in the performance of such members' duties hereunder. The Association may compensate any duly licensed Architect who has been delegated rights and duties as provided in this Article.

Section 13. Variances. Where circumstances such as topography, location of buildings, location of landscaping or other

matters require, the Architectural Review Committee, by the vote or written assent of a majority of the members thereof, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Review Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his Lot, including, but not limited to, zoning ordinances, Lot setback lines or requirements imposed by the City or other governmental authority.

Section 14. Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Review Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Lot which has been the subject matter of an approval of a submission for an Improvement to his Lot. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Review Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

Section 15. Non-Liability of Architectural Review Committee Members. Neither Declarant, the Association, the Board or the Architectural Review Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Review Committee. The Architectural Review Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Review Committee, and the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 16. Appeal. In the event plans and specifications submitted to the Architectural Review Committee are disapproved, the party making such submission may appeal in writing to

the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Review Committee. The Board shall submit such request to the Architectural Review Committee for review, and the written recommendations of the Architectural Review Committee will be submitted to the Board. Within sixty (60) days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said sixty (60) day period shall be deemed a decision in favor of the party making such submission.

Section 17. Grading/Irrigation. No Owner shall permit any act to be performed on such Owner's Lot which would result in erosion of the Common Area, including, but not limited to, changing the grading of his Lot or over-irrigating same. If the Owner permits any such act resulting in erosion of or other damage to the Common Area, said Lot Owner will be personally liable to the Association for such damage and a Special Assessment shall be levied against such Lot Owner's Lot to recover all costs and expenses incurred to repair or reconstruct that portion of the Common Area damaged by such Lot Owner.

ARTICLE X

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association. Except as may otherwise be provided in this Declaration, and without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, in a neat, clean, safe, sanitary, attractive and orderly condition at all times, the Common Area designated by the Board, the Declarant, in this Declaration, or in any subsequent Notice(s) of Annexation, as generally indicated hereinbelow:

(a) The Common Area (and all Improvements thereon) to be maintained, irrigated, landscaped, repaired, improved, restored and replaced in a neat, clean, safe, attractive and orderly condition at all times shall include, but not be limited to, the following:

(1) Taking all action necessary to keep the Common Area free of all weeds, trash, rubbish, graffiti, and debris;

(2) All paseos, in a condition comparable to the condition originally approved by the City;

(3) Maintaining the landscaped areas of the Lots described and/or depicted in an exhibit to this Declaration or any duly recorded Notice of Annexation (e.g., for Phase 1, see Exhibit "A") and landscaping,

irrigating, and otherwise maintaining all common landscaped areas, including, without limitation landscaped areas located on lettered lots outside the Project boundary walls or fences (e.g., for Phase 1, see Exhibit "A" attached hereto), the parkways adjacent to the public streets within the Project, all street trees in the Project as required by the Project conditions of approval, all traffic medians within the Project, and all open space within the Project (e.g., the landscaped corridor over which Southern California Edison holds a nonexclusive easement for power lines and facilities). All common area grass lawns shall be maintained so that it is evenly cut, evenly edged, free of bare or brown spots, free of debris and free of weeds above the level of the lawn. All common area landscaping other than lawns shall be free of weeds, dead vegetation and debris. All trees and shrubs shall be trimmed so that they do not impede pedestrian traffic along the walkways. All trees shall also be root pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures. All landscaping shall be properly maintained with efficient irrigation to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides that may contribute to urban runoff pollution;

(4) Maintaining the Association Walls (e.g., for Phase 1, see Exhibit "C") in a condition comparable to the condition originally approved by the City;

(5) Maintaining all common recreational facilities (including the tot lot and all playground equipment, benches, drinking fountain, trash receptacle, enhanced pavement, and other Improvements located in the tot lot), all clustered mailboxes, light standards and trellises, and all Project entry monumentation, in a condition comparable to the condition originally approved by the City;

(6) Landscaping, irrigating, maintaining, and repairing the Improvements within and related to the Public Park Areas, as set forth in the Article of this Declaration entitled "City Obligations;"

(7) Maintaining all other areas, facilities, equipment, services, aesthetic components or other Improvements of whatever nature as may, from time to time, be set forth in any Notice of Annexation, budget approved by the DRE, or as approved by the Board or Declarant;

(8) Maintaining everything that the Association is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level

of maintenance reflected in the most current budget of the Association, and in conformance with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, or as required by the product manufacturers' maintenance guidelines/recommendations, or as commonly accepted maintenance practices may govern, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area and Improvements thereon (as set forth below, each Owner shall maintain everything that Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Guidelines and Maintenance Recommendations, and any product manufacturers' maintenance guidelines/recommendations, as well as commonly accepted maintenance practices). At all times, the Common Area shall be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or improvements within the boundaries of the Project and Association, to surrounding property, or to property and improvements within the Project; and

(9) Performing all necessary tasks required to conform with applicable City and/or State regulations.

(b) Maintain all other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members or designated by the Board; and

(c) Except as otherwise herein specified as being paid by individual Owners, the costs of maintenance, repair, restoration and replacement as provided in this Article shall be Common Expenses and shall be paid out of the general fund of the Association.

Section 2. Maintenance Manual. The Declarant may deliver to the Board a "Maintenance Manual" which sets forth the Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Common Area. The Board shall, during its meetings, determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps, if any, need to be taken to assure proper inspection and maintenance of the Common Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual

for appropriate revisions at least on an annual basis after the Board has prepared the annual pro forma budget and reserve study required by the By-Laws.

In addition to any obligations set forth in a Maintenance Manual, the Board may have the Common Area inspected at least once every three (3) years to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established herein, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection. The Board may have a report of the results of the inspection prepared. If determined appropriate by the Board, the report shall be furnished to Owners within the time set forth for furnishing Owners with the budget. The report should include at least the following:

- (a) A description of the condition of the Common Area, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items;

- (b) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

- (c) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

- (d) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

- (e) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

- (f) Such other matters as the Board deems appropriate.

Section 3. Project Inspections. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Project to be conducted by the Architectural Review Committee to report any violations thereof. The Board shall also cause inspections of the Common Area and all Improvements thereon to be conducted in conformance with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in

conjunction with the inspection required for the reserve study to be conducted as required herein, in the By-laws or by State law, to (a) determine whether the Common Area is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Area and all Improvements thereon. The Board shall keep a record of such determinations in the Board's minutes. Until otherwise notified by the Declarant, the Board shall keep Declarant fully informed of the Board's activities under this Section. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Declaration, including this Section.

The Board shall prepare a report of the results of each of the inspections required by this Section, which shall comply with Section 2 above, including: For a period of ten (10) years after the date of the last close of escrow for a Lot in the Project, the Board shall also furnish to Declarant (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent inspection report prepared for any portion of the Common Area, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

Section 4. Maintenance of Phases Subject to Construction Easement. Notwithstanding anything stated to the contrary in this Declaration, the Association shall have no obligation to maintain or repair any portion of a Phase until commencement of the Association's Assessments against the Lots within such Phase. Should any Improvements overlap between Phases, the Association shall only be responsible to maintain that portion of such Improvements which lie in the Phase(s) in which the Association's maintenance obligations have commenced.

Section 5. Repair and Maintenance by Owner. Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration (including Section 1 above):

(a) Each Owner shall maintain his Lot and the Residence located thereon, including, without limitation, all walls and fences (but excepting therefrom the Association Walls), roofs, patios, patio covers, decks, deck covers,

balconies, windows, window frames, screens, locks and doors of his Residence, landscaping and irrigation improvements (except any such landscaping and irrigation maintained by the Association, if any), natural and manufactured slopes, irrigation lines, sewer laterals, fire sprinklers, if any, hot water recirculation systems, if any, and all other Improvements located on or servicing such Owner's Lot in a neat, clean, safe and attractive condition at all times, and make all repairs as they may be required. Each Owner shall maintain everything that the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Guidelines and Maintenance Recommendations, as well as commonly accepted maintenance practices. The Board may adopt Rules and Regulations to regulate the use of the driveways located within the Common Area.

(b) Each Owner shall, within six (6) months after the close of escrow for the sale of a Lot to Owner from Declarant (i.e., the date of recordation of the grant deed conveying the Lot from the Declarant to the Owner), install the landscaping in the yard areas of Owner's Lot where landscaping has not been installed by Declarant. Thereafter, each Owner shall maintain his or her Lot in a neat and attractive condition, including all necessary landscaping and gardening, to properly maintain and periodically replace, when necessary, the trees, plants, grass and other vegetation originally placed on such Lot by Declarant, if any. The Board may adopt Rules and Regulations proposed by the Architectural Review Committee to regulate landscaping permitted within the Project. In the event that any Owner shall fail to install and maintain landscaping, including all slope areas within the Lot, if any, in conformance with the Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment. The Common Area may not be altered without the Board's prior written approval, which approval may be withheld in its sole and absolute discretion.

Section 6. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Area owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 7. Damage and Destruction Affecting a Residence - Duty to Rebuild. In the event any Residence is damaged or

destroyed by fire or other casualty, it shall be the duty of the Owner of such Residence to repair or reconstruct said Residence in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Review Committee. The Architectural Review Committee shall not approve such variance if the finished Residence would be inharmonious or out of keeping with the overall architectural theme of the Project, or with the exterior design of any adjacent Residences. The affected Owner shall be obligated to proceed, with all due diligence hereunder, and shall be responsible for commencing reconstruction within three (3) months after the damage occurs, and completing such reconstruction as soon as reasonably possible thereafter.

Section 8. Owners' Cooperation for Maintenance. The Owners of Residences which are located on adjacent Lots shall cooperate with each other as is reasonably necessary to enable each Owner to properly maintain and repair his respective Residence and/or to mitigate any damage to his Residence.

ARTICLE XI

ENVIRONMENTAL AND OTHER DISCLOSURES AND REQUIREMENTS

Section 1. Environmental Requirements.

(a) Duties and Obligations of the Owners. To reduce and/or eliminate negative effects on the environment within the Project, all Owners and/or tenants, as applicable, shall:

(1) Not discharge toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, and other such fluids into any streets, public or private, or into storm drain or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County, and City requirements as prescribed in their respective containers.

(2) Use best management practices, as described in the "California Storm Water Best Management Practices Handbook," to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements to the Project.

(b) Duties and Obligations of the Association. Notwithstanding anything to the contrary set forth herein, the Association shall:

(1) Contract with a contractor to perform all activities required to minimize the pollution of storm drain water and to comply with the best management practices and NPDES requirements, which shall generally be limited to the following:

i) Minimize irrigation runoff by using controllers to provide several short watering cycles;

ii) Immediately correct any irrigation design or maintenance deficiencies which cause excessive runoff;

iii) Prohibit application of fertilizers within three (3) days prior to an anticipated rain;

iv) Follow all fertilizer applications with light irrigation to permit fertilizer to soak into the landscaped area; and

v) Dispose of waste properly.

ARTICLE XII

DAMAGE OR DESTRUCTION TO THE COMMON AREA

Section 1. Restoration of Damaged Common Area. Except as otherwise provided in Section 2 hereinbelow, damage to or destruction of all or any portion of the Common Area shall be handled in the following manner:

(a) In the event of damage to or destruction of the Common Area, and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Common Area to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Area, the Association shall, as promptly as practical, cause such Common Area to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each of the Lots on an equal basis.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Area, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether:

(1) To restore the Common Area as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying Assessments against each of the Lots on an equal basis; or

(2) To restore the Common Area in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Common Area, and which is assessable as provided above to all Lots, but which is less expensive than restoring the Common Area to its condition prior to the damage or destruction.

Section 2. Election by Owners Not to Restore Damaged Common Area.

(a) Notwithstanding the provisions set forth in Section 1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, the Owners may not elect to rebuild or restore the Common Area and to disburse the available insurance proceeds to the general fund of the Association.

(b) In the event the Owners shall have so voted not to rebuild the Common Area, the Common Area shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Association.

(c) In the event the Owners shall have so voted not to rebuild the Common Area, unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the utilities and open spaces, at least to the extent said utilities and open spaces were accepted initially by the City in lieu of payment of fees due pursuant to law.

Section 3. Retention of Excess Insurance Proceeds in General Fund. In the event any excess insurance proceeds remain after restoring the destroyed Common Area pursuant to this Article, the Board shall retain such sums in the general fund of the Association.

ARTICLE XIII

CONDEMNATION

Section 1. Distribution of Awards - Common Area. A condemnation award affecting all or any portion of the Common Area shall be remitted to the general fund of the Association.

Section 2. Board of Directors as Attorney-in-Fact. All Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Area.

ARTICLE XIV

COVENANT AGAINST PARTITION

Section 1. Covenant Against Partition. By acceptance of his deed, each Owner shall be deemed to covenant for himself, and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Project, unless the Project: (a) has been in existence in excess of fifty (50) years, (b) is obsolete and uneconomical, and (c) the Owners of fifty percent (50%) of the total of all Lots in the Project join in such action for partition.

ARTICLE XV

INSURANCE

Section 1. Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association and shall maintain and pay the premiums for the following insurance coverage:

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of the Common Area, together with all Improvements located thereon. Said policies shall be primary and shall be maintained for the benefit of the Association and Owners. The coverage does not need to include land, foundations, excavations or other items normally excluded from such coverage. Such policy or policies must contain, if required and if obtainable:

(1) An Agreed Amount and Inflation Guard Endorsement;

(2) Construction Code Endorsements (such as Demolition Cost Endorsement);

(3) A Contingent Liability from Operation of Building Laws Endorsement; and

(4) An Increased Cost of Construction Endorsement, if there is a construction code provision which would become operative and require changes to undamaged portions of any Improvements or the Common Area.

(b) Public Liability Insurance. A policy or policies of full coverage public liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) Fidelity Bonds. Officers' and Directors' errors and omissions insurance, and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, Directors, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds, in the custody of the Association, or twenty-five percent (25%) of the estimated annual operating expenses of the Project, plus reserves, whichever is greater. In addition, if the Association enters into an agreement for professional management of the Project, the Association shall require such company to submit evidence of its fidelity bond coverage to the same extent as the Association's coverage. The Association shall be named as an additional obligee in the management agent's bond.

Section 2. Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such additional coverage or other insurance as it may deem necessary or appropriate, or otherwise financially beneficial for the Owners, including, but not limited to, earthquake insurance,

flood insurance, Workers' Compensation Insurance and plate glass insurance.

Section 3. Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least thirty (30) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

Section 4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 5. Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 6. Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Area, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Area"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form

in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

Section 7. Rights and Duties of Owners to Insure. Nothing herein shall preclude any Owner from carrying any casualty and fire insurance for his Residence and all personal property within his Residence, and/or public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Lot or elsewhere upon the Project. Each Owner hereby acknowledges and agrees that the Association does not maintain any property or liability insurance for an Owner's Lot. If obtainable, any liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Declarant, the Association, the Board, their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 8. Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

Section 9. Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Residences. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause should be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mort-

gages on Residences is not required on a policy insuring the Common Area.

Section 10. Compliance With Requirements of FHLMC and FNMA. Notwithstanding the provisions of this Article, the Association shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC and FNMA established by those entities for planned development projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent such coverage is not available or has been waived, in writing, by such agencies.

Section 11. Required Waiver. All policies of hazard and physical damage insurance may provide, only if available at a reasonable cost to the Association as determined by the Board, in its sole discretion, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Any defense based on co-insurance;
- (b) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (c) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect or omission of any named insured, or the respective agents, contractors and employees of any insured;
- (d) If applicable, any right of the insurer to repair, rebuild or replace, and, in the event the Residence is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured or the fair market value thereof;
- (e) If applicable, notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and
- (f) Any right to require any assignment of any Mortgage to the insurer.

Section 12. Annual Notification of Insurance. The Association shall, upon issuance or renewal of insurance, but not less than annually, notify its Members as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is or is not insured to the levels specified by this Article, and that

if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified in Section 1 above, then Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance. The Association shall further prepare and distribute to all its Members a summary of the Association's insurance coverage pursuant to Section 1365 of the California Civil Code, as same may be amended from time to time.

ARTICLE XVI

MORTGAGEE PROTECTION

Section 1. Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC and FNMA, and other lenders and investors, to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article are added hereto, and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

(a) The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

(c) Except as provided by statute in case of condemnation or substantial loss to the Lots and/or Common Area, unless sixty-seven percent (67%) of the, Owners other than

Declarant, or sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each Lot encumbered by said Mortgagee's first Mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner's Lot;

(2) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area. The granting of easements for public utilities or for other purposes consistent with the intended uses of the Common Area or the residential nature of the Project, shall not be deemed a transfer within the meaning of this clause;

(3) Use hazard insurance proceeds for losses to the Common Area for other than repair, replacement or reconstruction;

(4) Effect any decision of the Association to terminate professional management and assume self-management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;

(5) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot or the maintenance and operation of the Common Area within the Project, including, without limitation, fences and landscaping within the Project;

(6) Fail to maintain fire and extended coverage on the insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof; and

(7) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law.

(d) All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole;

(e) No provision of the constituent documents shall be interpreted to give any Owner or any other party priority

over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area or such Owner's Lot;

(f) The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments, rather than by Special Assessments;

(g) Each holder, insurer or guarantor of a first Mortgage who has filed with the Association a written request for notice shall be entitled to timely written notice of:

(1) Any condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof;

(2) Any substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

(3) Any default in the performance by an individual Owner of any obligation under the constituent documents which is not cured within sixty (60) days after the Association learns of such default, which notice shall state the length of time which such Owner has been delinquent;

(4) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(5) Any abandonment or termination of the Project; and

(6) Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

(h) Any agreement for professional management of the Project, or any contract providing for services of the Declarant, may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days' or ninety (90) days' or less, respectively, prior written notice;

(i) First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and

which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement;

(j) A first Mortgagee of a Lot in the Project will, upon request, be entitled to:

(1) Examine the books and records of the Association during normal business hours;

(2) An audited financial statement from the Association for the previous fiscal year (without expense to the holder, insurer or guarantor requesting said statement), however, if an audited financial statement is not available and until such time as the Project contains fifty (50) Lots, any Mortgage holder may be allowed to have an audited financial statement prepared, at its own expense; and

(3) Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(k) Each Owner shall notify the Association in writing within ten (10) days after the close of escrow for the purchase of his Lot of the name and address of his first Mortgagee, and thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee;

(l) If any Lot (or portion thereof) or the Common Area (or portion thereof) is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first Mortgage on such Lot will be entitled to timely written notice of any such proceeding or proposed acquisition; and

(m) Subject to the provisions set forth herein, in the event any portion of the Common Area encroaches upon any Lot or any Lot encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 2. Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective Covenants shall

cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these Protective Covenants shall be violated, the Declarant, its successors and assigns, the Association, or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Protective Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

Section 3. Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and By-Laws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot in the Project by the FHLMC and the FNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Lot in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA, and/or GNMA; provided, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within thirty (30) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

ARTICLE XVII

ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that the improvements of the Common Area have not been completed prior to the first close of escrow for a Lot following the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing

for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE XVIII

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

Section 1. Development of the Project. The Declarant intends to sequentially develop the Annexation Property on a phased basis; however, Declarant may elect not to develop all or any portions of said Annexation Property, to annex such portions of the Annexation Property in Phases of any size or to develop more than one (1) Phase in any order and at any given time, subject to the provisions of this Article.

Section 2. Annexation Pursuant to Approval. Except as otherwise allowed pursuant to Section 3 hereinbelow, upon obtaining the approval in writing of the Association pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of Association Members, the owner of any property who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Notice of Annexation, as described in Section 4 of this Article.

Section 3. Annexation Pursuant to General Plan of Development. Declarant shall have the right, subject to the provisions of this Article, annex all or any portions of the Annexation Property, thereby making such Annexation Property subject to this Declaration and to the jurisdiction of the Association, without the vote or written assent of the Association or its Members, provided and on condition that:

(a) Any annexation pursuant to this Section shall be allowed when the proposed annexation is in substantial conformance with the overall general plan of phased development for the Project originally submitted to and approved by the DRE with the Phase 1 Final Subdivision Public Report application (e.g. the Annexation Property as depicted and/or described on Exhibit "B"), or as subsequently approved by the DRE; and

(b) A Notice of Annexation, as described in Section 4 of this Article, shall be recorded covering the designated portions of the Annexation Property.

Section 4. Notice of Annexation. The annexation of additional property authorized under this Article shall be made in filing of record a Notice of Annexation, or similar instrument, covering said additional property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional property. The Notice of Annexation may contain such complementary additions to and modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the annexed property, including, but not limited to, marketing and selling vacant Lots, the architectural guidelines for any construction thereon, maintenance responsibilities between the Association and the Owners in this annexed property and payment of Assessments, and which are fair, reasonable, and appropriate, and are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the Protective Covenants set forth in this Declaration. A notice of annexation may annex solely Common Area so long as such annexation would not violate the provisions in this Declaration regarding increases in Regular Assessments and is approved by the DRE.

Section 5. Effective Date of Annexation. Any Notice of Annexation recorded on a subsequent Phase of the Project shall become effective immediately upon the first close of an escrow for the sale of a Lot in said Phase, as evidenced by the recordation of the first instrument of conveyance for said Lot.

Section 6. Amendments to Notice of Annexation. Notwithstanding any other provisions in this Declaration to the contrary, a Notice of Annexation may be amended by the requisite affirmative vote of the Owners for such Phase upon the vote or

written consent of a majority of a quorum of the Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled "General Provisions," in only the annexed property described in said Notice of Annexation, rather than by the Owners casting affirmative votes or giving written consent on behalf of a majority of all Members of the Association (and first Mortgagees, if applicable) in the Project, on the following conditions:

(a) Such amendment applies only to the annexed property described in said Notice of Annexation; and

(b) Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

Section 7. Right of De-Annexation. Declarant hereby reserves the right to delete all or any portions of the Annexation Property which may be annexed to the Project pursuant to this Declaration, and to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that (i) the de-annexation shall be made prior to the first close of an escrow for the sale of a Residence in the property to be de-annexed, (2) the de-annexation is recorded in the same manner as the applicable Notice of Annexation, (3) the Declarant has not exercised any vote with respect to any Residence in such property, and (4) no Assessments have commenced on any portion of the property subject to the de-annexation.

Section 8. Parties to Notice of Annexation. For so long as Declarant has the right to annex all or any portion of the Annexation Property into the Project, each Notice of Annexation covering property owned by Declarant shall be executed only by Declarant. Declarant's execution of any Notice of Annexation shall evidence Declarant's consent thereto.

ARTICLE XIX

CITY OBLIGATIONS

Section 1. Dedication to City and Use of Public Park Areas. On the final map of Tract 16323, Declarant shall dedicate to the City, and the City shall accept the dedication of, Lots A, C, D, E, F, H, I, J, and K of Tract 16323 ("Public Park Areas"), subject to any and all easements (e.g., utilities easement in favor of Southern California Edison) and other encumbrances of record. The Public Park Areas shall be available for use by members of the general public, as well as Owners and other residents of the Project, subject to the ordinances, regulations, and rules of the City.

Section 2. Maintenance of Public Park Areas. The Association shall be responsible for the landscaping, irrigation,

maintenance and repair of the Improvements within and related to the Public Park Areas (including, without limitation, pedestrian lights and irrigation controllers, the large lawn, small lawn, ground cover, citrus grove, community garden, trees, decomposed granite, trash collection, rodent and pest control, paved surfaces, enhanced pavement, and metal fencing in the Public Park Areas, but excluding all electrical towers and other facilities in the Public Park Areas owned and/or operated by Southern California Edison), in a condition comparable to the condition originally approved by the City, and for the provision of electricity for the operation of the pedestrian lights and irrigation controllers and irrigation water to the Public Park Areas. The City hereby creates, establishes and grants to the Association a nonexclusive easement in, on, over, under, across and through the Public Park Areas for the purposes of performing the landscaping, irrigation, maintenance and repair of the Improvements in the Public Park Areas and providing the electricity and irrigation water to the Public Park Areas described herein.

Section 3. Allocation of Costs. The City shall be responsible for the payment of:

(a) Twenty-five percent (25%) of the Association's actual costs and expenses incurred in landscaping, irrigating, maintaining, and repairing the Improvements in the Public Park Areas and in providing the electricity and irrigation water to the Public Park Areas described herein (collectively, "Ongoing Maintenance Costs"); and

(b) Twenty-five percent (25%) of the reserve allocations for the Improvements in the Public Park Areas set forth in the Association's annual budget (collectively, "Reserves").

On or before the commencement of each fiscal year of the Association, the City shall pay to the Association twenty-five percent (25%) of the projected Ongoing Maintenance Costs and Reserves set forth in the Association's annual budget for such fiscal year. In the event that the actual amount of the Ongoing Maintenance Costs exceeds the projected Ongoing Maintenance Costs set forth in the Association's annual budget, or the Association is required to increase its Reserves, the Association may submit written invoices to the City requesting payment of such additional amounts, and the City shall pay each invoice within thirty (30) days of its receipt thereof. In the event that the actual amount of the Ongoing Maintenance Costs is less than the projected Ongoing Maintenance Costs set forth in the Association's annual budget, or the Association is required to decrease its Reserves, the City shall receive a credit for the difference in the Association's annual budget for the following fiscal year.

Section 4. Insurance. The City shall, at the City's sole cost and expense and as determined by the City in its business

judgment, procure and maintain appropriate insurance coverage or self insure against potential claims, demands, causes of action, judgments, costs, expenses, losses, debts, attorneys' fees, and other liabilities of any kind or nature arising out of or related to the maintenance and/or use of the Public Park Areas, including, without limitation, any maintenance of the Public Park Areas performed by the Association or its agents, representatives, or contractors. The Association may, but shall not be required to, maintain insurance coverage relating to the Public Park Areas.

Notwithstanding the foregoing, if any Improvements in the Public Park Areas are damaged as a proximate result of any act or omission of any Owner or any member of the Owner's family, the Association shall repair the damage at the Association's sole cost and expense and may impose a Compliance Assessment against such Owner's Lot to recover the costs and expenses of repairing such damage. If any Improvements in the Public Park Areas are damaged, and the Association and City cannot reasonably determine who caused the damage, the Association shall repair the damage, and the City shall be responsible for seventy-five percent (75%) of the cost of the repair and the Association shall be responsible for twenty-five percent (25%) of the cost of the repair.

The obligations of the City and the Association shall not be limited by the amount of any insurance coverage maintained by either the City or the Association. The provisions of this Section shall survive the City's acceptance of the dedication of the Public Park Areas and the termination of this Declaration.

Section 5. City's Membership in Association. The City shall be a limited Class A Member of the Association with the rights set forth in this Section. Notwithstanding any other provision in this Declaration, the City shall be entitled to cast one (1) vote with respect to any matter of the Association requiring a vote of the Class A Members; however, the City shall not be eligible to hold serve on the Board, to hold any office in the Association, or to be a member of any committee formed by the Board (including, without limitation, the Architectural Review Committee or any nominating committee). Notwithstanding any other provision of this Declaration, the City shall not be obligated to pay Assessments to the Association.

Section 6. Structured Cable System. The City has required that a structured cable system, including without limitation, fiber optics, relays, translators, pull boxes, data cabinets, and related appurtenances be installed by a qualified contractor ("City's Contractor") in all homes and beneath the streets within the Project, and that the Structured Cable System connect to other parts of the system located outside of the Project boundaries. The City's contractor/manufacturer shall provide and City shall administer a twenty-five (25) year warranty on the cabling associated with the Structured Cable System for all homeowners in the Project. It is anticipated that City's Contractor

may be required to enter the Project from time to time in order to inspect, maintain, repair, and/or replace the Structured Cable System, as required by the warranty. Declarant makes no representations or warranties of any kind or nature concerning the Structured Cable System or the warranty offered by the City on the Structured Cable System, including, without limitation, any implied warranty of quality, capacity, or fitness for a particular purpose. By acceptance of a deed to a Lot in the Project, each Owner acknowledges and agrees that, in the event of any defect in or damage or injury caused by the Structured Cable System, such Owner shall look only to the City or the City's Contractor for recourse, and each Owner waives and releases any and all claims which such Owner may have now or in the future arising out of or relating to the Structured Cable System.

Section 7. Amendments. The provisions of this Article may not be amended or terminated without the written approval of the City.

ARTICLE XX

GENERAL PROVISIONS

Section 1. Enforcement.

(a) Enforcement Rights. The City and/or the Owner of any Lot in the Project, including the Declarant, shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, any or all of the covenants imposed by this Declaration, including, without limitation, the right to prosecute a proceeding, at law or in equity, against the person or persons who have violated, or are attempting to violate, any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation. The City of Loma Linda is hereby expressly made a beneficiary of the covenants, conditions and restrictions contained herein and shall have the right but not the obligation to enforce any of the provisions of this Declaration. The City of Loma Linda, through its duly authorized agents or employees, shall have the right to enter upon the Property for any purpose related thereto, including the following:

(1) Inspection, maintenance and repair of all common areas, landscaping slopes and drives located in the Property.

(2) Enforcement of parking/traffic regulations.

The City shall have the right to recover from the Association the cost of any repairs or maintenance performed by the City, and may impose a lien or special assessment

against the common areas and lots to secure payment of said costs.

(b) Violation of Covenant Deemed Nuisance. The result of every act or omission whereby any of the covenants contained in this Declaration are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the City or by any Owner, including the Declarant, or by such Owner's successors in interest.

(c) Remedies Are Cumulative. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) Failure to Enforce Covenants. The failure of the City or any Owner, including the Declarant, to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) Effect of Breach on Mortgagees. A breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such Lot shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) Fines. Each Owner agrees, by the acceptance of his deed, that recovery of damages at law for any breach of the provisions of this Declaration would not be an adequate remedy. In order to encourage compliance, deter noncompliance, and enable the effective enforcement of this Declaration, the Declarant (so long as Declarant owns any Lot within the Project) and/or the Association is authorized to establish and collect fines and penalties, in addition to any fines and penalties which may be imposed by the City pursuant to the appropriate authority of applicable municipal codes, for the breach of any provision of this Declaration which is not cured or which reoccurs after the violating Owner has received written notification of said violation. The fines and penalties shall be determined by taking into account the: (1) violation, (2) desirability of deterring future violations, (3) the expense related to alternative legal action, and (4) all other reasonable related factors.

(g) Prefiling Requirements. Prior to filing a civil action by an Owner solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in

conjunction with a claim related to the enforcement of this Declaration, the parties may be required to comply with Civil Code Section 1354, if applicable. Failure to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of the right to sue regarding enforcement of the applicable management documents. Upon motion by any party for attorneys' fees and costs as the prevailing party, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(h) Penalties. The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(i) Suspension. The Board, for and on behalf of the Association, may, after Notice and Hearing, temporarily suspend an Owner's voting rights for a period not to exceed thirty (30) days for any infraction of the Association's published Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(j) Additional City Rights. In addition to the above general rights of enforcement, the City and any other governmental entity with appropriate jurisdiction shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing all applicable codes and/or local ordinances, including, but not limited to, the California Vehicle Code, and is hereby granted an easement over the Project for such purpose. The rights of City to compel performance shall include the following:

(1) Failure of Association to Maintain Common Area. In the event that the Association fails to maintain the Common Area as required in this Declaration, the City shall have the right, but not the duty, to perform the necessary maintenance. If the City elects to perform such maintenance, the City shall give written notice to the Association, with a copy thereof to the Owners in the Project, setting forth with particularity the maintenance which the City finds to be required and requesting the same be carried out by the Association within a period of thirty (30) days from the giving of such notice. In the event that the Association fails to carry out such maintenance of the Common Area with the period specified by the City's notice, the City shall be

entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Owners as provided herein.

(2) Special Assessments Levied by the City. In the event the City has performed the necessary maintenance to the Common Area, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance of the Common Area. The City shall provide a copy of such invoice to each Owner in the Project, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners in the Project pursuant to the provisions of this Section. Said invoice shall be due and payable by the Association within twenty (20) days of receipt by the Association.

Section 2. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 3. Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial sixty (60) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Covenants Running With the Land. Each of the Covenants provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall henceforth be deemed to be covenants running with the land for the

use and benefit of the Lots, and superior to all other encumbrances applied against or in favor of any portion of the Project which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds to the Lots may, but shall not be required to, set forth said easements.

Section 7. Amendments.

(a) Amendments by Declarant. Prior to the close of escrow for the sale of a Lot to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of Tract No. 16323 and/or the Annexation Property, Declarant may unilaterally amend this Declaration (i) to conform this Declaration to the requirements of VA, DRE, FNMA, FHLMC, GNMA, the County, City, State or Federal laws or regulations or any other governmental agency or entity then in effect, (ii) correct typographical or inadvertent errors in the Declaration and/or Exhibits attached thereto, (iii) record any maintenance standards and/or obligations of the Association and Owners, and (iv) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

(b) Amendments by Association. Except as otherwise provided herein, this Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Association, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the City for an order reducing the necessary percentage required under this Section to amend this Declaration. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

(c) Approval of Mortgagees. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA participates in the financing of Lots in the Project, the

written consent of not less than fifty-one percent (51%) of the first Mortgagees shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

(1) The legal status of the Project as a planned development;

(2) Voting rights;

(3) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;

(4) Reduction in reserves for maintenance, repair and replacement of Common Area;

(5) Responsibility for Common Area maintenance and repair;

(6) Reallocation of interests in the Common Area or rights to use the Common Area;

(7) Boundaries of any Lot;

(8) Convertibility of Common Area into Lots or Lots into Common Area;

(9) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;

(10) Insurance or fidelity bonds requirements;

(11) Restrictions on the leasing of Lots;

(12) Restrictions on alienation, including, but not limited to, rights of first refusal;

(13) Any decision by the Association to establish self-management, if professional management was previously required by an eligible first Mortgagee or legal documents governing the Project;

(14) Restoration or repair of the Project in a manner other than as specified in this Declaration;

(15) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and

(16) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgagees.

An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. In the event the Association is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%) of the first Mortgagees must agree to said termination. Notwithstanding the foregoing, in the event any first Mortgagee receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and such first Mortgagee does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved such proposed amendment.

(d) Approval by City. Notwithstanding any other provisions of this Article, no amendment to alter, modify, terminate or change the Association's maintenance obligations under this Declaration with respect to the Common Area or the Association Walls or to alter, modify, terminate or change any other provision affecting the rights of the City shall be effective without the prior written consent of the City. The Declarant or the Association shall forward, or cause to be forwarded, to the City Clerk a written notice of any such amendment or termination. Notwithstanding the foregoing, in the event the City receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and the City does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such request by the Board, the City shall be deemed to have approved such proposed amendment. Any purported amendment or modification of this Declaration that has not been so approved by the City shall be null and void.

(e) Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove, except any amendment pursuant to paragraph (a), shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgagees, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon

all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 8. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 9. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by first-class, registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. If such notice is not sent by first-class, registered or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

Section 10. Attorneys' Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association and/or an Owner has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. Except as may otherwise be stated in the Arbitration of Disputes procedure set forth herein, in case a suit, arbitration, or alternative dispute resolution is instituted, the prevailing party shall recover the cost of the suit, arbitration, or alternative dispute resolution, in addition to the aforesaid costs and fees.

Section 11. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

Section 12. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration, and except as may be filed by Declarant, from time to time, with the DRE.

Section 13. Project Disclosures.

(a) Conditions of Approval. The Project is subject to all terms and conditions set forth in the City's conditions for the approval of the tentative tract map for and development of the Project. Neither this Declaration nor any contract of sale, lease, or other written document or any means or method shall be established, or shall attempt to establish, any requirement, restriction, or limitation on the Declarant, or any person, individual or entity, which would operate, directly or indirectly, to prevent or preclude any other developers of the Property or Project, or any person, individual, or entity, in complying with all applicable provisions of the tentative map approved by the City and other City ordinances, rules, policies, or regulations.

(b) Highways/Roads. The Project is located in the vicinity of the 10 freeway and other major highways, streets and roads (e.g., Mission Road). Owners and other residents of the Project may experience and/or be exposed to, among other things, significant noise, vibrations, dust and air pollution, unpleasant odors, bright lights, wind, and traffic congestion relating to the use, maintenance, and repair of such highways, streets, and roads. Although certain measures may have been implemented in order to minimize the levels of exterior noise detectable within certain Residences (e.g., block walls), those measures will not eliminate all exterior noise.

(c) NOTICE OF AIRPORT IN VICINITY. This Project is presently located in the vicinity of an airport, within what is known as an airport influence area (i.e., an area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission). For that reason, the Project may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Each Owner may wish to, and should consider what airport annoyances, if any, are associated with the Project before an Owner

completes the purchase and determine whether such a location and airport annoyances are acceptable.

(d) Power Lines. Overhead high voltage electric transmission and distribution lines maintained and operated by Southern California Edison are located in a landscaped corridor within the Project. Owners and other residents of the Project may be exposed to and/or experience, among other things, noise and electromagnetic radiation relating to the operation, maintenance, and repair of the electric lines. Numerous scientific and epidemiological studies have been conducted as to whether there are any adverse health effects from magnetic and electric fields generated by electric power lines. Further information of this subject is available from the Electric and Magnetic Fields Program, California Department of Health Services, 2151 Berkeley Way, Annex 10, Berkeley, CA 94704, or from Brian Thorson, Regional EMF Manager, Southern California Edison Company, 1851 West Valencia Drive, Fullerton, CA 92833.

(e) Prior Use. Portions of the Project site were previously used as part of the Van Uffelen Dairy. There may have been other prior uses of the Project site as well. As a consequence of such prior usage, pesticides and other chemicals may be present in the soil at the Project site.

(f) Single Story. All Residences in the Project which were originally constructed by the Declarant as a single story, shall be prohibited from adding a second story.

(g) Structured Cable System. As set forth above, the City has required that a structured cable system, including without limitation, fiber optics, relays, translators, pull boxes, data cabinets, and related appurtenances be installed by a qualified contractor ("City's Contractor") in all homes and beneath the streets within the Project, and that the Structured Cable System connect to other parts of the system located outside of the Project boundaries. The City's contractor/manufacture shall provide and City shall administer a twenty-five (25) year warranty on the cabling associated with the Structured Cable System for all homeowners in the Project. It is anticipated that City's Contractor may be required to enter the Project from time to time in order to inspect, maintain, repair, and/or replace the Structured Cable System, as required by the warranty. Declarant makes no representations or warranties of any kind or nature concerning the Structured Cable System or the warranty offered by the City on the Structured Cable System, including, without limitation, any implied warranty of quality, capacity, or fitness for a particular purpose. By acceptance of a deed to a Lot in the Project, each Owner acknowledges and agrees that, in the event of any defect in or damage or injury caused by the Structured Cable System, such Owner shall look only to the

City or the City's Contractor for recourse, and each Owner waives and releases any and all claims which such Owner may have now or in the future arising out of or relating to the Structured Cable System.

(h) Each Owner, for and on behalf of himself and the members of his family, his tenants, lessees, guests and invitees, expressly approve all of the foregoing conditions and risks, and waives all causes of action and covenants not to sue the City, the Declarant, and their respective directors, officers, members, employees, agents and consultants for any damages or injuries which may arise from or relate to any of such conditions and/or risks.

Section 14. Conflicts in Management Documents For the Project. In the event of any conflict between and/or among the provisions of any of the management documents for the Project, the Declaration shall be deemed to supersede the provisions of any conflicting management documents, including, without limitation, the By-Laws, architectural standards, if any, and the Rules and Regulations, if any.

Section 15. Davis-Stirling Act. Notwithstanding the provisions set forth in this Declaration, various laws (including, but not limited to, the Davis-Stirling Common Interest Development Act, Sections 1350, et seq., of the California Civil Code, and the Federal Fair Housing Act, Title 42 United States Code, Sections 3601, et seq., as such laws may be amended, from time to time), may supplement or override the provisions of this Declaration. This Declaration shall be interpreted and construed to be consistent with such applicable laws, as same may be amended, from time to time, and, accordingly, in addition to the provisions set forth above, Declarant makes no representations or warranties regarding the future enforceability of the provisions of this Declaration.

Section 16. Exhibits. Each and every Exhibit referenced herein and attached to this Declaration is incorporated herein by this reference as if set forth herein in full. All depictions in such Exhibits are for illustrative purposes only and the "as-built" condition by Declarant shall be controlling.

Section 17. Notice of Procedures. On September 20, 2002, the Governor of the State of California signed into law the construction dispute reform bill known as Senate Bill No. 800, which added Section 43.99 and Title 7 (commencing with Section 895) to Part 2 of Division 2 of the California Civil Code ("SB 800"). SB 800 contains various procedures which may impact an Owner's legal rights as a homeowner. Each Owner may wish to consult with an attorney or other legal advisor to ascertain the requirements of SB 800 and its impact upon his or her legal rights.

Section 18. DECLARANT'S ELECTION NOT TO ENGAGE IN NONADVERSARIAL PROCEDURE PROVIDED BY CHAPTER 4 OF SB 800. DECLARANT HAS ELECTED NOT TO ENGAGE IN THE NONADVERSARIAL PROCEDURE FOR THE RESOLUTION OF DISPUTES SET FORTH IN CHAPTER 4 OF SB 800 (COMMENCING WITH CIVIL CODE SECTION 910). INSTEAD, DECLARANT INTENDS TO SEEK TO ENFORCE THE NONADVERSARIAL PROCEDURES AND DISPUTE RESOLUTION PROCEDURES CONTAINED IN THIS DECLARATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME FOLLOWING APPROVAL BY DECLARANT, AND/OR IN THE PURCHASE AND SALE CONTRACT BETWEEN DECLARANT AND AN OWNER. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS ELECTION SHALL BE DEEMED TO CONSTITUTE A WAIVER OF DECLARANT'S RIGHTS, IF ANY, TO REQUIRE THE ASSOCIATION OR ANY OWNER TO COMPLY WITH THE PROCEDURES OF THE CALDERON ACT (SET FORTH AT CIVIL CODE SECTION 1375) OR TO ENFORCE ANY PROVISION OF LAW RELATING TO THE RESOLUTION OF DISPUTES OTHER THAN CIVIL CODE SECTION 914.

Section 19. Declarant's Agent for Notice of Claims. The following individual ("Agent") is currently Declarant's agent for notice of claims pursuant to the nonadversarial dispute resolution procedures adopted by Declarant (notice to Declarant does not constitute notice of a claim, or any other notice, under California Civil Code Sections 895 et. seq.):

Name: Alex Xu
Address: 4959 Palo Verde Street, Ste. B-100
Montclair, CA 91763

Section 20. No Enhanced Protection Agreement. Nothing in this Declaration shall be interpreted to constitute, an "enhanced protection agreement," as defined in Section 901 of the California Civil Code.

Section 21. Common Area Claims. Notwithstanding any provision to the contrary in the Declaration regarding resolution of disputes regarding the Common Area, at such time as an Owner is elected or appointed to the Board, the Declarant shall be deemed to have relinquished control over the Association's ability to initiate claims regarding the Common Area.

Section 22. Maintenance Standards. The Association and each Owner shall maintain everything he/she/it/they is/are obligated to maintain in a manner consistent with the provisions herein and in the Declaration and in conformance with any "Maintenance Recommendations/Schedules" (i.e., procedures, standards, and/or schedules for the maintenance and operation which may be provided to said Owner and/or the Association by Declarant, as such procedures, standards, and/or schedules may be updated and revised as appropriate), and commonly accepted maintenance standards. Unless otherwise provided in such Maintenance Recommendations/Schedules, herein, or in the Declaration, each Owner and the Association, as applicable, shall determine the level and frequency of maintenance. The Board shall provide to Declarant, for a period of ten (10) years following the last close of escrow for a Lot, and

within thirty (30) days after the Association's receipt of a written request therefor from the Declarant, the report noted in the Declaration (if such report is prepared).

Section 23. Declarant's Representative. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the date that is ten (10) years after the date of the last close of escrow in the Project, the Declarant shall be entitled to have a representative ("Declarant's Representative") present at all meetings of the Members and the Board. For so long as Declarant's Representative is entitled to attend such meetings, the Association and/or Members, as appropriate, shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner/Member, and the Association shall provide Declarant's Representative with the minutes for the meetings of Owners, the Board and committees. The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board or any liability as a Board member. This Section may not be amended without the prior written approval of the Declarant, which approval may be withheld in Declarant's sole and absolute discretion.

(signatures to follow)

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

"DECLARANT"

APLL70, LLC, a Delaware
limited liability company

BY: Apex Holdings, LLC, a
Delaware limited liability
company

Its: Managing Member

BY: _____

ITS: Manager

STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 200____, before me, the undersigned,
a Notary Public in and for said State, personally appeared
_____, known to me (or proved to me on the
basis of satisfactory evidence) to be the person whose name is
subscribed to the within instrument and acknowledged to me that
s/he executed the same in his/her authorized capacity, and that by
his/her signature on the instrument, the persons or the entities
upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

City Acknowledgement/Consent

The City acknowledges, agrees and accepts its obligations and responsibilities as set forth in the attached Declaration, including but not limited to Article XIX.

"CITY"

CITY OF LOMA LINDA, a municipal corporation

By: _____
Its: Mayor

Attest: _____
City Clerk

Approved as to form and content:

City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

EXHIBIT "A"

DEPICTION OF EASEMENTS FOR
MAINTENANCE OF LANDSCAPED AREAS

[to be attached]

EXHIBIT "B"

ANNEXATION PROPERTY

The Annexation Property is more particularly described as that certain real property located in the City of Loma Linda, County of San Bernardino, State of California, more generally described as:

All of Tract No. 16323, as per Map recorded in Book 308, Pages 35 through 41, of Miscellaneous Maps filed in the Office of the County Recorder of San Bernardino County, State of California, except the Property.

EXHIBIT "C"

DEPICTION OF ASSOCIATION WALLS

[to be attached]

EXHIBIT "D"

NO PARKING AREAS OF PUBLIC STREETS

[to be attached]

EXHIBIT "E"

SIDEYARD EASEMENT AREAS

[to be attached]

CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN

The undersigned beneficiary under that certain Deed of Trust recorded on _____, 200_, as Instrument No. _____, in the Official Records of San Bernardino County, California, agrees that the lien of the Deed of Trust shall be junior and subordinate and subject to the attached "Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements For Mission Lane" ("Declaration"), to any Notice of Annexation recorded pursuant to the Article herein entitled "Annexation of Additional Property" ("Notice of Annexation") and to any easements to be conveyed to Mission Lane Maintenance Corporation in accordance with the terms of the Declaration and any Notice of Annexation.

DATED: _____

"LIENHOLDER"

a _____

BY: _____

Its: _____

BY: _____

Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 200_, before me, the undersigned,
a Notary Public in and for said State, personally appeared
_____ and _____,
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the persons whose names are subscribed to the
within instrument and acknowledged to me that they executed the
same in their authorized capacity, and that by their signatures on
the instrument the persons or the entities upon behalf of which the
persons acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

Recording requested by and
when recorded return to:

GALLAGHER & MOORE
Attention: Frederick C. Moore, Esq.
2 Park Plaza, Suite 300
Irvine, CA 92614

(Space Above Line For Recorder's Use)

AGREEMENT TO FORBEAR FROM LEVYING ASSESSMENTS
FOR ANNEXATION NO. 68 OF LANDSCAPE
MAINTENANCE DISTRICT NO. 1

THIS AGREEMENT TO FORBEAR FROM LEVYING ASSESSMENTS FOR ANNEXATION NO. 68 OF LANDSCAPE MAINTENANCE DISTRICT NO. 1 (the "Agreement") is made and entered into this ____ day of _____, 2005, by and between the CITY OF LOMA LINDA ("City"), a municipal corporation, in its capacity as the governing body for City of Loma Linda Landscape Maintenance District No. 1 ("LMD No. 1"), and APLL70, LLC, a Delaware limited liability company ("APLL70"). City and APLL70 may hereinafter be sometimes referred to individually as "Party" and collectively as "Parties."

R E C I T A L S:

A. APLL70 owns and is developing as a common interest development, more particularly described in Section 1351(k) of the California Civil Code as a "planned development," that certain real property located in the City of Loma Linda, County of San Bernardino, State of California, commonly known as "Mission Lane" and more particularly described on Exhibit "A" attached hereto and incorporated by reference (the "Project").

B. It is anticipated that a nonprofit mutual benefit corporation ("Association") will be formed under the laws of the State of California to enforce certain covenants, conditions and restrictions, and reservation of easements recorded against the Project and to maintain the Common Area of the Project, including, without limitation, the landscaped areas described and depicted on Exhibit "B" attached hereto and incorporated by reference ("Improvement Areas").

C. The City has required that American Pacific Homes, Inc. ("APH"), as agent for APLL70, execute: (i) a "Petition" requesting that the Project be annexed by Annexation No. 68 into LMD No. 1 and that LMD No. 1 maintain the Improvement Areas; and (ii) an "Assessment Ballot" approving a proposed landscaped maintenance assessment of \$2,495.00 per year per Lot within the Project for fiscal year 2005/2006.

D. In consideration for APH's execution of the Petition and Assessment Ballot on behalf of APLL70, the City has agreed that LMD No. 1 shall forbear from levying assessments for Annexation No. 68 (other than minimal assessments necessary to cover preparation of the annual engineers report and administrative fees associated with Annexation No. 68, which are currently estimated to be in the range of \$10 to \$35) against the Lots in the Project as long as the Association maintains the Improvement Areas in accordance with the requirements set forth in the City's conditions of approval for the Project.

E. To avoid any future confusion concerning this issue, the Parties desire to set forth their agreement in writing.

F. The City is the governing body for LMD No. 1 and has been duly authorized to enter into this Agreement on behalf of LMD No. 1.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, the mutual covenants set forth hereinbelow, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and APLL70 agree as follows:

1. **Agreement To Forbear From Levying Assessments.**
The City agrees that LMD No. 1 shall forbear from levying any assessments against any Lot (except for minimal assessments necessary to cover preparation of the annual engineers report and administrative fees associated with Annexation No. 68, which are currently estimated to be in the range of \$10 to \$35) in the Project so long as the Association maintains the Improvement Areas in accordance with the following requirements set forth in the City's conditions of approval for the Project:

(a) All grass lawns in the Improvement Areas shall be maintained so that they are evenly cut, evenly edged, free of bare or brown spots, free of debris and free of weeds above the level of the lawn;

(b) All landscaping in the Improvement Areas other than lawns shall be free of weeds, dead vegetation and debris;

(c) All trees and shrubs in the Improvement Areas shall be trimmed so that they do not impede pedestrian traffic along the walkways. All trees shall also be root pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures (to the extent applicable);

(d) All landscaping in the Improvement Areas shall be properly maintained with efficient irrigation to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides that may contribute to urban runoff pollution; and

(e) At all times, the Improvement Areas shall be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or improvements within the boundaries of the Project and Association, to surrounding property, or to property and improvements within the Project.

2. **Association's Failure to Maintain Improvement Areas.** If the Association fails to maintain the Improvement Areas as required by the conditions of approval for the Project, the City shall give written notice to the Association, setting forth with particularity the maintenance which the City finds to be required and requesting that the Association commence performance of such maintenance within a period of thirty (30) days from the giving of such notice. If the Association fails to perform such maintenance of the Improvement Areas within the period specified by the City's notice, the City shall be entitled , but is under no obligation, to cause LMD No. 1 to take over the maintenance of the Improvement Areas and to commence levying assessments against the Lots in the Project, on a pro-rata basis as of the date the City commences maintenance, in the amounts authorized by the Petition and Assessment Ballot and consistent with applicable law.

3. General Provisions.

(a) Enforcement. The Parties and their respective successors in interest (e.g., the Association and the Owners of the Lots within the Project) shall each have the right to enforce, by proceedings at law or in equity, all of the terms and provisions of this Agreement, which right shall include, without limitation, the right to prosecute a proceeding against the person or persons who have violated, or are attempting to violate, any of said terms and/or provisions, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) Waiver. The failure of either Party to enforce any term or provision set forth herein shall not constitute a waiver of their right to enforce the same term or provision, or any other term or provision hereafter. No waiver of any provision herein shall be deemed or shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver.

(c) Severability. If any term, provision, condition or covenant set forth herein, or the application hereof shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected hereby, and each term and provision set forth herein shall be valid and enforceable to the fullest extent permitted by law.

(d) Cooperation. Each Party agrees that it will proceed with diligence with any acts required on its part. Further, the Parties shall each execute and deliver any and all documents and perform any acts that are reasonably necessary to effectuate the provisions of this Agreement.

(e) Exhibits. Each and every exhibit referred to in this Agreement and attached hereto is incorporated herein by reference as if set forth in full.

(f) Notice. Any notice, or document required or permitted by this Agreement to be given to either Party (or their respective successors in interest) shall be in writing and shall be deemed to have been received when personally delivered, or within two (2) days after deposit in the United States mail, registered or certified, postage prepaid, addressed to the Parties or their successors in interest as follows:

City:City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354
Attn: _____

APH: American Pacific Homes, Inc.
4959 Palo Verde Street, Ste. B-100
Montclair, CA 91763
Attention: John Snell

Association:

Mission Lane Maintenance Corporation
c/o American Pacific Homes, Inc.
4959 Palo Verde Street, Ste. B-100
Montclair, CA 91763
Attention: John Snell

Either Party (or their respective successor in interest) may, by written notice, designate a new address to which notices shall be directed.

(g) Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto, and shall be governed by the laws of the State of California.

(h) Attorneys' Fees. If any legal action, arbitration, or equitable proceeding is commenced to resolve any controversy, claim, or dispute regarding the terms and provisions set forth herein, the prevailing party shall be entitled to recover from the nonprevailing party its reasonable attorneys' fees and costs of suit.

(i) Arbitration. If the parties cannot resolve a dispute which occurs pursuant to this Agreement, the matter shall be submitted to binding arbitration pursuant to procedures adopted by the American Arbitration Association ("AAA"), or any successor thereto, or to any other entity offering arbitration services (e.g., JAMS/ENDISPUTE) that is acceptable to the parties. No person shall serve as an arbitrator in any dispute in which the person has any financial or personal interest in the result of the arbitration, except by the written consent of all parties. Prior to accepting any appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the arbitration process. Confidential information disclosed to

an arbitrator by the parties or by witnesses in the course of the arbitration shall not be divulged by the arbitrator, without the consent of the disclosing party. All records, reports or other documents received by the arbitrator while serving in such capacity shall be confidential. There shall be no stenographic record of the arbitration process, unless mutually agreed by the parties.

(j) Inurement. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors, assigns and grantees, including, without limitation, the Association and the Owners of the Lots within the Project.

IN WITNESS WHEREOF, this Agreement is effective as of
the day and year first written above.

"CITY"

CITY OF LOMA LINDA, a municipal
corporation

By: _____
Its: Mayor

Attest: _____
City Clerk

Approved as to form and content:

City Attorney

"APLL70"

APLL70, LLC, a Delaware
limited liability company

BY: APEX HOLDINGS, LLC, a
Delaware limited liability
company
Its: Managing Member

BY: _____

ITS: Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

[illegible]

On _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT

All of Tract No. 16323 as per Map recorded in Book 308, Pages 35 through 41, inclusive, of Maps filed in the Office of the County Recorder of San Bernardino County, State of California

EXHIBIT "B"
IMPROVEMENT AREAS
(to be attached)